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THE NEW REPUBLIC

UNREASONABLE DOUBT? SIMPSON, RACE & AMERICA

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ROBERT WOODSON: From King to Cochran **JIM SLEEPER:** From Cochran to Sharpton

...inations COOPER: Don't Worry

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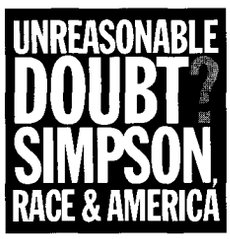

Cover by Eric Baker for THE NEW REPUBLIC. Articles on pages 6, 7, 10, 12, 13, 14, 16, 17, 18 and 43.

4 **CORRESPONDENCE** The art of the grant, the smoke gets in your eyes &c.

6 **ROBERT WRIGHT** TRB: UNUSUAL SUSPECTS Hidden villains of the Simpson case.

7 **THE EDITORS** UNREASONABLE DOUBT The eclipse of civil reason.

9 **NOTEBOOK** Picking on polar bears, whaling on Kristol &c.

10 **MICHAEL LIND** JURY DISMISSED Time to junk a medieval institution.

12 **MATTHEW COOPER** QUIT WORRYING Forget the alarmism over "America divided."

13 **ROBERT L. WOODSON SR.** FROM KING TO COCHRAN The decline of civil rights.

14 **RANDALL KENNEDY** AFTER THE CHEERS The Simpson verdict didn't come out of thin air. It was born out of the bitter experience of blacks with the judicial system. But now more than ever, ironically, blacks need a justice system they can call their own.

16 **JONETTA ROSE BARRAS** MY RACE, MY GENDER O.J. and the dilemma of black women.

17 **JIM SLEEPER** THE SIMPSONS O.J. is not alone. Across the country, black activists are turning criminal trials into street theater.

18 **LINCOLN CAPLAN** SPORT TV How Court TV, *The American Lawyer* and their imitators are ruining legal journalism.

21 **HANNA ROSIN** BERKELEY POSTCARD: RACE MATTERS In defense of Berkeley's old—and surprisingly moderate—race-based admissions policy.

24 **JEFFREY ROSEN** COURT WATCH: DISORIENTED The Colorado anti-gay rights initiative is deplorable but probably constitutional.

28 **STANLEY KAUFFMANN** ON FILMS: HOLIDAYS AND OTHER TROUBLES Vanessa Redgrave's exquisite presence in *A Month by the Lake*. *To Die For* is anything but.

29 **JED PERL** ON ART: BORN UNDER SATURN America's most exciting painter.

33 **JAMES WOOD** MY DEATH AS A MAN *Sabbath's Theater* by Philip Roth

39 **GORDON S. WOOD** FAUX POPULISM *Self-Rule: A Cultural History of American Democracy* by Robert H. Wiebe

42 **EAMON GRENNAN** POEM *Place*

43 **NATHAN GLAZER** POLLS APART *Facing Up to the American Dream: Race, Class, and the Soul of the Nation* by Jennifer L. Hochschild

46 **CHARLES LANE** WASHINGTON DIARIST: VERY BARRY

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CORRESPONDENCE

Giving it back

To the editors:

There are factual errors in David Samuels's "Philanthropical Correctness" (September 18 & 25) concerning Carnegie Corporation's programs in 1989 and 1965. Carnegie gave away $37.3 million in grants in 1989. An additional $2.7 million was appropriated for two sponsored commissions and other studies and projects. These appropriations represented about 7 percent of the amount for grants, the two commissions 5 percent. In no year since 1983 has the corporation awarded more than 9.9 percent of its grants to sponsored commissions and study groups. In 1989 the corporation made 251 grants, of which seventy-nine went to institutions of higher learning or schools; sixty-eight went to American universities and colleges and the rest to universities abroad. In 1965 the corporation devoted more support to higher and advanced education; today a priority is the education and healthy development of children and youth, in which qualified research is often undertaken by freestanding research institutions.

AVERY RUSSELL
Program officer, Carnegie Corporation
New York, New York

To the editors:

I regret that David Samuels misunderstood my unwillingness to compare current philanthropic endeavors with past ones. While many foundation grants have immediate and observable results, others manifest their significance over time. The achievements Samuels lists took years to develop, and it is easy now to look back and assess their impact. The breadth and scope of foundation funding has expanded phenomenally in the past twenty-five years. In health care and biomedical research alone, foundations have made tremendous gains in knowledge and practice possible. Twenty-five years from now we may see that the cure for cancer, or AIDS, was the result of critical research supported by foundations.

It's hard to believe Samuels would claim to find a general trend in grantmaking by mischaracterizing recent grants of the Ford Foundation and the Carnegie Corporation. In 1993, the latest year of record, the largest proportion of foundation grants (24 percent or more than $2.4 billion) went to "education." Of that, 43 percent supported higher education. That year, "public/society benefit" organizations, which include most advocacy groups, received only 11 percent of foundation grants. Samuels ignores the cumulative effects of Ford and Carnegie grantmaking. In the last twenty years they have reached to spur vital research, economic development and improved education and health care for hundreds of thousands of people around the world.

The $11.1 billion foundations currently give each year makes their impact felt in countless communities. Foundation funding has purified drinking water in El Paso, rebuilt neighborhoods in East L.A. and fed thousands of south Florida's needy. The schools, hospitals, museums, food banks, housing developments and labs that benefit from foundation support are legion.

Samuels leaves the impression that such projects as a failed HUD program in San Francisco and a city-funded park were foundation-sponsored, when in fact they were government efforts. He acknowledges that the abortive HUD program was subjected to grantmakers' scrutiny at the Council on Foundations conference, but he misses the point that program officers constantly examine, question and test the approaches of other organizations to determine what's most successful.

Samuels is correct that the council embraces and promotes inclusiveness. It's hard to see how the philanthropic community could do other than acknowledge the diversity of our society.

Dissatisfaction with some foundation grants is to be expected. Samuels, however, joins those critics who would substitute their judgment for that of trained and experienced program officers whose job it is to evaluate proposals and recommend funding approaches. Indeed, he takes offense at the very training and experience that has led to growing professionalism among grantmakers. He decries the fact that almost 40 percent of foundation CEOs are hired from the nonprofit sector. Presumably, he also would find it odd if a similar percentage of editors came from the journalism field.

JAMES A. JOSEPH
President, Council on Foundations
Washington, D.C.

To the editors:

David Samuels got facts wrong and thus ended up with the wrong conclusions. There are thousands of examples of significant foundation-supported work. In recent decades, a major commitment of philanthropic support has focused on public education reform. It has produced results. One example: the network of Public Education Funds, which now operates in more than fifty communities throughout the U.S., began as a Ford Foundation effort to provide small grants for classroom innovation. Fifty local institutions in the network now spend $40 million each year on behalf of school improvement and constitute a powerful supplemental system for school renewal.

Ford, other foundations, corporations and government have helped build thousands of neighborhood-based organizations led by people who are rebuilding inner-city communities. Visit the South Bronx, Liberty City and Watts, and you'll find new housing, businesses and hope among the residents. Should the U.S. ever create a major program to revitalize decayed inner-city communities, these groups would provide essential community leadership.

Samuels's assertion that foundations no longer use evaluation strategies to judge what works is off the mark. In 1990 Ford supported a four-city demonstration in which disadvantaged high-school freshmen received tutorial help, mentoring, opportunities for community service and financial incentives for later college or vocational training. *The New York Times* reported that it "produced some of the most remarkable results for poor youth since the tests run for Head Start and Job Corps." With Labor Department funds, the program is now being expanded in a replication effort.

Ford (and other foundations) has invested heavily in serious research on issues its programs address. It has helped to create institutions for this very purpose, such as the Manpower Demonstration Research Corporation, which provides the nation's most authoritative knowledge about welfare programs' operations, and the Drug Policy Research Center at the Rand Corporation. Ford also funds projects to strengthen research and teaching in colleges.

If you still yearn for a neat silver bullet that will miraculously solve our most basic challenges, the problem is not with foundations but with ourselves.

FRANKLIN A. THOMAS
President, the Ford Foundation
New York, New York

To the editors:

As a former officer of the Ford Foundation, I agree with David Samuels that the large foundations have become islands of self-congratulation divorced from political and social realities. But the trend toward exclusive concern with the "inclusiveness" of certain anointed minorities began long before Samuels observed it.

In the mid-'70s, after a dynamic beginning of activism and creativity over the previous eight to ten years under McGeorge Bundy, Ford and other foundations began their one-track course of programming for minorities. Their employment policies, too, followed this pattern. What mattered was what group one belonged to, not who one was.

Except for one group: older Ameri-

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cans. Four of us at Ford took the foundation to the EEOC charging age discrimination in 1981 when President Franklin Thomas decided to fire a score of senior program officers. Proof of the narrowness of Ford's vision was that, as it focused on minorities, a group that was protected under the law, the aged, didn't occur to Ford's leadership. Thus, Ford's consciousness needed to be raised even on the subject that it had made so proudly, and I believe unwisely, its virtually exclusive programmatic concern.

There is need for a broad-gauged review of the programs and practices of major foundations by an independent nongovernmental group, not from the view of compliance with the law but of the quality and performance of its staffs and product. We need foundations, but we don't need them to continually do the same thing. Post office clerks do that better.

ROBERT B. GOLDMANN
New York, New York

To the editors:

While David Samuels's article "Philanthropical Correctness" may be somewhat correct in pointing out that we have not recently seen foundation-supported public experiments on the scale of Head Start, it is way off-target in claiming that foundations do not make a difference today.

The Corporation for Supportive Housing (which I chair) was created in 1991 by the Pew Charitable Trusts, the Robert Wood Johnson Foundation and the Ford Foundation to expand the supply of permanent housing linked to a safety net of support services that enable formerly homeless people with chronic mental and medical disabilities to live autonomously. This solution to homelessness works and is cost effective. With the support of these and nearly sixty other foundations, CSH has seeded the development of over 6,000 housing units.

The federal McKinney Programs, which provide funding for supportive housing, are facing drastic cuts in Congress even though two recent independent evaluations have shown that this housing is our best bet for ending homelessness. The program should be funded and foundations thanked for demonstrating that there are workable, cost-efficient solutions to, at least, some social ills.

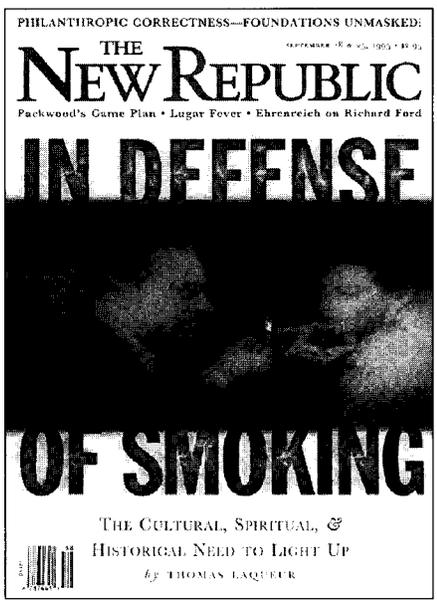
RICHARD RAVITCH
New York, New York

David Samuels replies:

Avery Russell's claim of "factual errors" in my piece is false and misleading: the discrepancy between the numbers we use is the result of my having excluded eleven grants from my analysis because it was unclear who the recipients were and because Carnegie's year-by-year accounting is fuzzy. Russell's numbers are all but identical to mine, and support my thesis that Carnegie—like Ford and Rockefeller—has massively shifted resources away from falsifiable research and toward wishful advocacy. Nowhere do I mention the percentage of Carnegie funds devoted to high-flown "commissions" and "study groups." Readers can decide whether spending up to 10 percent of foundation funds per annum on such projects is a wise application of scarce resources.

The Ford numbers James Joseph cites are identical to mine. I clearly state that the disastrous attempt at forced integration of black and Asian public housing tenants in San Francisco was sponsored by HUD: it's an example of the practical effects of the "inclusiveness" agenda that Joseph and the council eagerly promote.

Franklin Thomas fails to provide a single example of a "fact" in my piece which he considers to be "wrong." As for Liberty City, the South Bronx and Watts, I leave it to readers' discretion as to whether these paradigmatic examples of urban devastation, into which foundations have poured many millions of dollars since the late '60s, are convincing evidence of Ford's success or of its failure.


PHILANTHROPIC CORRECTNESS—FOUNDATIONS UNMASKED:
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Packwood's Game Plan • Lugar Fever • Ehrenreich on Richard Ford
IN DEFENSE
OF SMOKING
THE CULTURAL, SPIRITUAL, & HISTORICAL NEED TO LIGHT UP
by THOMAS LAQUEUR

Smoke screen

To the editors:

Though Thomas W. Laqueur's "Smoking and Nothingness" and Nader Mousavizadeh's "Smoke" (September 18 & 25) make eloquent and nostalgic ratiocinations for the mystical, physiological, historical and quasi-divine smoking experience, both writers tacitly ignore the galvanizing principle behind the current frenzy to stop smokers: it kills nonsmokers. For Laqueur to posit that the "current paroxysms of anti-tobaccoism are not the result of new discoveries" suggests that the 1993 EPA study and report, "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders," never occurred. Mousavizadeh bemoans that "a sin of such relative innocence" is officially condemned and that no one is suggesting cigarettes be force-fed to 8-year-olds. What does an 8-year-old do in an enclosed area with smokers other than breathe force-fed smoke? (I'm not even going to touch his ludicrous suggestion that sexual discovery, and meaning, and danger for teens can only be found at the tip of a burning cigarette.) Smoke all you want, choose to "die your small deaths." But don't make that choice for me.

JODY ARLINGTON
New York, New York

Cabin fever

To the editors:

While it was important for TNR to label Bob Dole's return of our contribution as subservience to the religious right (Notebook, September 18 & 25), it was irresponsible to label the gift a foolish ploy without all the facts.

Log Cabin Republicans was approached by members of the Dole for President finance committee. We made it perfectly clear that our legislative priority was the reauthorization of the Ryan White CARE Act. Shortly after our meeting with the campaign, Dole signed onto the Ryan White legislation as a cosponsor.

Log Cabin attended a June 19 fundraiser with our PAC check. At the event we discussed scheduling Senate floor time for a vote on Ryan White with Dole. He assured us he was doing all he could do, and it would be brought to the floor as soon as possible. Despite predictions that Ryan White would not get to the floor of the Senate before the fall, the bill was approved, 97 to 3.

In addition to AIDS funding, Dole has maintained a long-term supportive relationship with Log Cabin Republicans. One year ago, he responded to our lobbying effort by signing on to a statement that he would not discriminate in hiring or firing or promoting of homosexuals in his office. It is well known that the senator has had gay staffers and that he has treated them with great respect.

Log Cabin Republicans' decision to support Dole was not a ploy. It was our effort to support someone who we had worked well with. The ploy in this story is Dole's decision to distance himself from our organization in an attempt to win the favor of the Republican Party's far right.

RICHARD TAFEL
Executive director,
Log Cabin Republicans
Washington, D.C.

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FROM WASHINGTON

Unusual suspects

Let's provisionally accept the prevailing white view that the O.J. Simpson verdict was a miscarriage of justice. Who or what is to blame? Here's my list of suspects.

(1) *Howard Jarvis.* Jarvis was a seminal carrier of the anti-tax fever that politicians have been exploiting ever since. His Proposition 13, passed in 1978, cut California property taxes by more than half and all but precluded subsequent increases. The Simpson trial showed what kind of county and municipal government you get with an inadequate tax base: inadequate. Indeed, the case exactly contradicts current Republican dogma, which sees local government as competence incarnate and federal government as a den of inefficiency. Throughout the trial, the higher the level of government a public servant came from, the more likely he or she was to impress. The FBI shoeprint connoisseur was sublime, employees of the California state crime lab were competent, and at the local level folly was the rule: sloppy criminologists, a loony coroner and mediocre prosecutors, consistently outgunned. All performing roughly as their salaries warrant.

And how about those cops? I hope, for detective Philip Vannatter's sake, that he *was* trying to plant evidence, because the only other explanation for his behavior is idiocy. Having overseen the extraction of blood from O.J. Simpson—*at the police station, where he was supposed to book it as evidence*—he took the blood vial to his car, drove God knows where and then, two hours later, carried it *into Simpson's home,* twenty miles away. Vannatter testified that he then handed the vial to famously hapless criminologist Dennis Fung, who said he then carried it to *his* car. But defense lawyers showed videotape of Fung leaving the house empty-handed. Meanwhile, the vial turned out to be missing some blood. So the prosecution proudly introduced the barely sentient nurse who had extracted the blood; he explained that—whoops!—he probably wrote down the wrong amount in the first place. Ever wonder why a mostly black jury might begin to think something was rotten in this case? Which brings us to our next suspect.

(2) *The LAPD's racist Rambo.* Six months ago in this space, I posited a theory as to why so many blacks believe Simpson was railroaded: because blacks, more than whites, do get railroaded. But I never dreamed I'd see corroboration on the scale of the Mark Fuhrman tapes. Combined with Vannatter's suspicious (if probably just negligent) behavior, and pervasive deficiency in the handling of evidence, the tapes made me start honestly thinking there might be reasonable doubt about Simpson's guilt.

I still feel, deep down, that there isn't; even assuming Fuhrman and Vannatter were both corrupt, two cops couldn't by themselves have planted most of the evidence. Then again, this white analysis assumes all willful misconduct is confined to these two men. Many blacks wouldn't assume that. And their track record is better than mine. At the trial's outset, when black suspicions of evidence tampering first surfaced, I casually dismissed them. Then came Vannatter and Fuhrman. Hmmm.

(3) *Lots of other cops.* It would be nice to think that Fuhrman—plainly a basket case—is an aberration among L.A. cops. But the Rodney King tape alone suggests that what's *highly* aberrant is the bizarre depth of his racism, not the racism itself. And probably in other cities, too, many cops harbor a hatred of blacks, or at least an aggressive suspicion of them. This helps explain the racial divide in views on the Simpson case. The hardly radical black journalist Clarence Page has noted that having an ugly encounter with a white cop is virtually standard experience for middle-class blacks; some police officers really will—as Fuhrman boasted—pull over a black man in a fancy car unless he's wearing a $300 suit.

It's trite but true to say that people who aren't black can't fathom the effects of such treatment. But thanks to affirmative action, some are getting closer. The possibility of a single act of discrimination in hiring or promotion now routinely leads whites to the conviction that they're persecuted. Imagine how sweeping the sense of oppression can get when such suspicions aren't limited to career junctures; when most people make their initial appraisal of you, consciously or unconsciously, based on the color of your skin; and when often those appraisals aren't favorable.

(4) *Black criminals.* If white racism is partly to blame for the Simpson verdict, what's to blame for the racism? As conservatives note, racism often draws strength from statistical truth. If you're a cop, and your job means getting shot at, and black men are especially likely to do the shooting, that's bound to affect your thinking, your feelings, your conduct. For that matter, even if you're not a cop, being especially wary of black males—even crossing the street to avoid them—makes statistical sense. Still, the waves of fear that prompt such street-crossing are often disproportionate to the threat. Indeed, the fear often blinds whites to subtle socioeconomic cues—how a black teenager dresses or acts—that if coolly appraised would wholly negate any color-based fear. All told, white fears of black crime may be no less wild than black fears of police misconduct. Both are grounded in reality but are too often undiscerning.

(5) *The inner city.* What do you think turns a disproportionate number of those sweet-looking black toddlers into criminals, whose conduct will then help sustain the white racism that helps explain the Simpson verdict? Suffice it to say that if Gil Garcetti had been born to an unwed black mother in South-Central L.A., he probably wouldn't be district attorney (though he might be one of the more meticulously groomed gang leaders).

Moral of story: an appreciable part of the gap between black and white worldviews boils down to conditions in the urban underclass. Corollary of moral: this gap won't be wholly bridged by "communication." Whites can try to convince blacks that self-pity and conspiracy-theorizing are counterproductive. And blacks can try to convince whites that stereotypes about race and criminality are unfair and pernicious. But in neither case is the message likely to have great effect. Because both perspectives are rooted in statistical truth and serve self-preservation, whether psychological or physical.

This magazine has long preached about the urgency of confronting the problem of the black underclass. We've touted a policy of welfare reform that neither political party embraces—it's too hard-nosed for liberals and too expensive for conservatives. (For the definitive blueprint see *The End of Equality* by TNR's Mickey Kaus.) To some extent, the Simpson verdict can be blamed on the fact that no one ever listens to us.

ROBERT WRIGHT

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THE NEW REPUBLIC

OCTOBER 23, 1995

UNREASONABLE DOUBT

There was one brief moment between Monday night, when the jurors in the Simpson case announced they had reached a unanimous verdict, and Tuesday morning, Pacific time, when that verdict was revealed to the nation, during which many white and black citizens allowed themselves to believe that Mr. Simpson had been convicted of murder in the first degree. What an exhilarating moment it was! In a stroke, the mostly black jury seemed to have rejected the racial appeals of the defense attorneys, and—balancing justified suspicions of the Los Angeles Police Department against the overwhelming physical evidence—voted for facts over emotions, color-blind objectivity over racial contingency, reasoned deliberation over group loyalties and ethnic fears. If this jury, at this time and place, could vindicate the possibility of common citizenship so decisively and so movingly, then perhaps the other racial pathologies that divide America were ultimately superable as well.

Then came the verdict. And suddenly the episode of wishful thinking seemed not only naïve, but even shamefully blinkered in its miscalculation of the chasm that separates the experiences and perceptions of black and white Americans. That the acquittal came so quickly was particularly stunning, which is why the social implications—rather than the minutiae of the evidence—are worth examining.

The first concerns not race, but gender. Among the many astonishing assertions of defense lawyer Johnnie Cochran—along with his comparison of Mark Fuhrman to Adolf Hitler—were those about domestic violence. When facing up to Mr. Simpson's history of wife-battering in his closing arguments, Cochran commented, "None of us is perfect." A predominantly female jury agreed with this casual assumption that wife-battery was a mere peccadillo; and the first juror to explain the verdict explicitly rejected the relevance of spousal abuse. Thus the prosecution's central and critical contention of motive was dismissed. The horrifying pictures of Nicole Brown Simpson's successive beatings, the tapes of her cries for help, her own predictions that she would be murdered by her ex-husband, the will discovered in a safe-deposit box: all these fit a classic pattern of spousal battering leading to murder. Yet they were ignored. White cops, when they incriminate black suspects, are, it seems, untrustworthy; male cops, when they protect male wife-beaters, are, it seems, reliable. One of the more disturbing elements of this trial was not how it revealed the discrepancies between white and black justice, but how it revealed the gulf between male and female.

The jury's doubts about the racial fairness and sheer competence of the LAPD was, in contrast, well-founded, as our colleague Robert Wright elaborates (see TRB, page 6). The pathological racist, Mark Fuhrman, should never have been employed by the LAPD: he proves every crackpot paranoid right. Detective Vannatter's incomprehensible treatment of blood samples was a parody of police incompetence. So, too, the early assault on O.J. Simpson's home. On the stand at the preliminary hearings, Vannatter testified implausibly that he visited Mr. Simpson to inform him of the murder, rather than to collect evidence from an obvious suspect, and jumped the wall of his house because he feared for Simpson's safety. This was, of course, a lie—one that undermined the credibility of the second, critical police witness.

But even discounting the history of wife-battery and fully acknowledging the bigotry and stupidity of Fuhrman and Vannatter, it seems to us that the vast amount of unrefuted DNA evidence, the lack of an alibi and the absence of any plausible alternative scenario to account for the murders, all point to an inexorable verdict of guilty beyond any reasonable doubt.

So what can account for the jury's astonishingly

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swift assertion of the opposite? One of the more hopeful explanations—or at least one that suggests a possibility for reform—is the absurdity of contemporary jury selection. Thirty years ago, the ideal of the deliberative jury was part of our civic religion; and jurors (albeit white and male) were selected by "key men" in their community for their intelligence, moral probity and capacity for calm and reasoned debate. By replacing the deliberative jury with the representative jury in a series of landmark statutes and judicial decisions, Congress and the Supreme Court candidly acknowledged that the jury is above all a political institution, and in a multiracial society, different racial and ethnic groups will bring different perspectives to the table. Like bartering legislators, representative jurors were expected to vote their group loyalties; and all groups were supposed to be represented in a "fair cross section" of society at large.

One of the painful lessons of the Simpson verdict is that the representative jury is fatally undermined when jurors in criminal cases are selected by attorneys for their ignorance and credulity and hermetic isolation from civil society. The Simpson jury looked not very much like America. It's significant, and typical, that only two of the twelve jurors were college graduates. Polls have consistently shown that belief in Simpson's guilt increases with education. According to a CBS poll, 43 percent of those who didn't finish high school think Simpson is guilty, compared to 49 percent of high-school graduates and 65 percent of college graduates. Is it rational for us to systematically exclude educated people from such deliberations, because they are more likely to be informed about the case, or have predetermined views on a whole variety of subjects? In an era in which complicated evidence such as DNA can play a critical role in trials, the dumbing down of juries may have much more of an impact than racial gerrymandering. If education, as well as race, shapes the way Americans evaluate evidence in criminal cases, then the acquittal of Mr. Simpson need not, perhaps, be viewed as much more of a social, as opposed to personal, tragedy than, say, the acquittal of Oliver North. To the degree that uneducated black jurors are suspicious of authority, they tend to acquit white defendants in proportions similar to black ones (see "Jurymandering," by Jeffrey Rosen, TNR, November 30, 1992).

Still, something remains; and that something, of course, is race. It was the centerpiece of the defense's closing arguments; and we need not repeat the polls that show overwhelming differences between how whites and blacks viewed the case. Nullification is one way to explain this, as Randall Kennedy elaborates (see "After the Cheers," page 14). The day after the verdict, Paul Butler, a law professor at George Washington University, argued in *The Wall Street Journal* that black jurors in non-criminal cases should "presume in favor of nullification," because "[b]lack people have a community that needs building, and children who need rescuing, and as long as a person will not hurt anyone, the community needs him to help."

Put simply, this is a serious challenge to the rule of law. It's absurd to compare the Simpson jurors to the Massachusetts jurors in 1850 who refused to enforce the Fugitive Slave Laws. A reasoned decision to ignore an unjust law is nothing like an emotional refusal to find guilt in the face of overwhelming evidence. The Simpson jury was typical in this. In the Bronx, where juries are disproportionately black and Latino, acquittal rates of black defendants are close to three times the national average. This statistic is reflected to a greater or lesser degree across the country. If we are entering a new period of nullification by black juries, it is just as poisonous as the nullification by racist white Southern jurors in an earlier generation who acquitted the murderers of Emmett Till after only one hour and seven minutes. If the Simpson verdict was a self-conscious act of nullification, then it can be understood but not excused. It is not the culmination of the civil rights idea but its abolition.

We doubt, however, that this verdict was entirely designed to "send a message." It hinged on a simple notion: Do small lies and inconsistencies on the part of the police automatically discredit *all* evidence and prove a black defendant's innocence beyond a reasonable doubt? Most black Americans would say yes; most white Americans would say no. Often this judgment is not even a conscious one: it is absorbed culturally, personally, psychologically into the very structure of a person's way of thinking. Some of it is justified; some not. But, in every case, it is an obstacle to the exercise of truly neutral, independent judgment, which is to say, the exercise of citizenship.

If there is a lesson to be learnt from this trial, then, it is surely that the practice of that judgment—the weighing of evidence against the deepest psychological and emotional bonds, the laying aside of personal identity for the task of impersonal duty—is an extremely difficult task. It requires constant and strenuous renewal. It needs a common, public space, and a common, public language. It demands not simply that we redouble efforts to remove the Mark Fuhrmans from the police but that we also be wary of all those structural elements that too easily accept the primacy of tribal identification. These come from the cynical left as well as the revanchist right. It also means that we should resist these easy impulses in our broader, popular culture. In today's America, from talk-radio to daytime television, from campus speech codes to Christian-right sectarianism, these essentially unreasonable impulses are resurgent. And we do not have to be naïve about their reality in order to see why we have to resist them. We can disagree about values, but only after we insist on the possibility of agreeing about facts. This is why Johnnie Cochran is so repulsive and compelling a symbol: he exploits the basest elements of the human psyche for money. In that, he represents more than a sleazy defense strategy. He represents the eclipse of civil reason in our culture at large. If a deliberative democracy is to function at all, that civility and that reason must be revived. And soon. •

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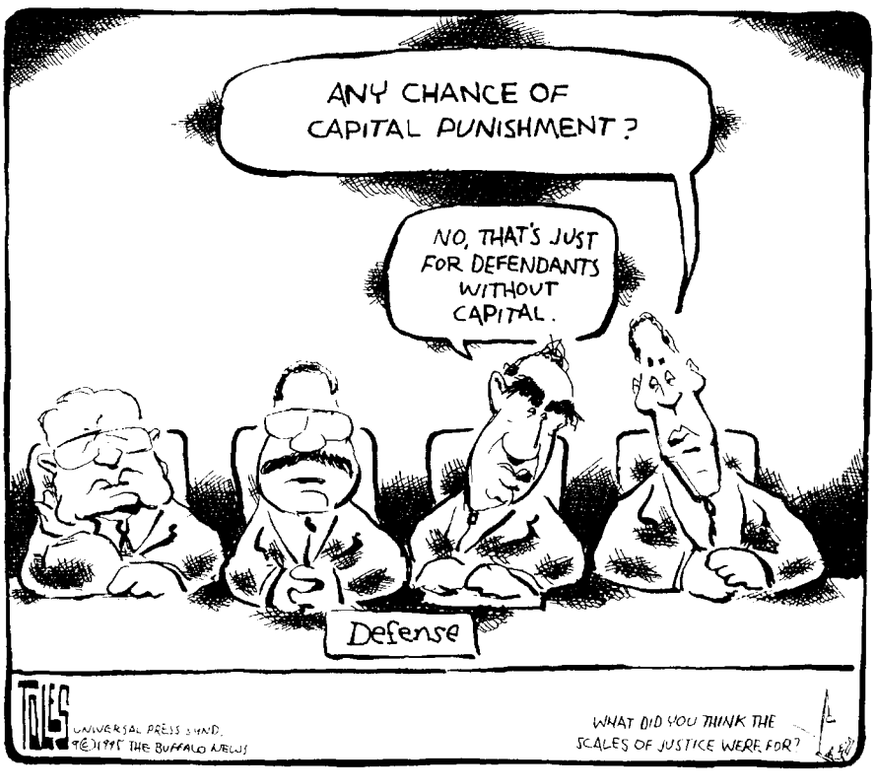
NOTEBOOK

SIC TRANSIT: The O.J. Simpson verdict forced President Clinton, Senator Sam Nunn and former Secretary of State James A. Baker III to reschedule press conferences.... Security guards broke down the door of a woman's apartment in Queens, New York, after they mistook the aroma of collard greens she was cooking for a rotting corpse.... Oregon's Linn County Jail now allows defendants to make bail payments with Visa and MasterCard.... A Henderson, Nevada, man was arrested for stealing bases from a ballpark near his home.... To coincide with the pope's visit to the U.S., the Vatican has authorized a line of costume jewelry.... Television advertising time just before and after the Simpson verdict sold for nearly 500 percent above the usual rate.... Oliver North will guest-star on the NBC action-adventure series "Jag."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WHAT DID YOU THINK THE SCALES OF JUSTICE WERE FOR?

POLAR FLEECE: President Clinton, in threatening to veto the Republican budget, reserved special ire for a proposal to allow oil drilling in the Arctic National Wildlife Refuge in Alaska. It's as good a target as any. The two congressional committees authorizing the drilling—the Senate Energy and Natural Resources Committee and the House Resources Committee—are chaired by Senator Frank Murkowski and Representative Don Young, both Alaskans closely linked with the oil industry. They defend the upheaval of this pristine, snow-white polar bear habitat on fiscal grounds, insisting the drilling will raise $1.3 billion in deficit-reducing federal revenue. The calculus is baseless. First, the number is based on outdated Bush-era projections that oil prices will climb to over $33 per barrel. Today, they're holding steady at $20. Second, it assumes that the federal government gets to split the tax revenues from the drilling evenly with the state of Alaska. But the Statehood Act of 1959 guarantees Alaska 90 percent of all revenues—meaning the federal take would be not $1.3 billion, but a measly $260 million. The avaricious Alaskans pushing the deal promise they'll settle for 50 percent. But back on home tundra, they're not so conciliatory. On September 10, Senator Ted Stevens told *The Fairbanks News-Miner*: "We should get exploration going now, then the compact can be enforced in court. Once the state actually receives less than 90 percent—then we can sue." On September 19, Democrats in committee offered an amendment to call off the drilling if Alaska breaks its promise and sues. It was defeated.

NEOCONNED: In the late 1970s and early 1980s, Irving Kristol, editor of *The Public Interest*, helped lend intellectual credibility to the supply-side theory that cutting taxes would not increase the deficit. Kristol opened *The Public Interest* to supply-siders and introduced Jack Kemp, author of the Kemp-Roth tax bill that initiated the era of disastrous deficits, to supply-side guru Jude Wanniski. In the thirtieth anniversary issue of *The Public Interest*, Kristol now confesses that he and his allies never really understood economics; they were merely after a something-for-nothing gimmick that would help elect Republicans.

> Among the core social scientists around *The Public Interest* there were no economists. (They came later, as we "matured.") This explains my own rather cavalier attitude toward the budget deficit and other monetary or fiscal problems. The task, as I saw it, was to create ... a Republican majority—so political effectiveness was the priority, not the accounting deficiencies of government.

Now he tells us. Thanks anyway, Irving, for the confession of complete political cynicism. The "accounting deficiencies of government," by the way, at last count, add up to $4.9 trillion.

THIS JUST IN:

Teen-age girls often have babies fathered by men

—*The Sunday Oregonian*, September 24, page A18

(Thanks to Carl and Leslie Batten of Portland, Oregon.)

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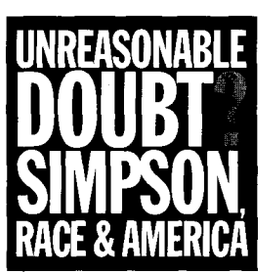
The institution from the Dark Ages.

JURY DISMISSED

By Michael Lind

In the days and weeks to come, you will read and hear a small army of eminent jurists, politicians and journalists responding with soothing assurances to popular outrage over the travesty of justice in the Simpson case. They will tell you that, though fallible individuals sometimes make mistakes, the contemporary American jury system remains the best arrangement ever devised for ascertaining guilt and innocence. The jury system works.

Don't believe a word of it. The American jury system does not work to free the innocent and punish the guilty in an efficient and humane manner. It never has. Juries have always abused the institution, sacrificing impartial justice to political or ethnic goals. In Colonial America, the jury gave colonists a way to subvert local overlords appointed by London. From independence until the civil rights revolution, the jury was a means by which white bigots legally lynched Indians, blacks and Asians (or acquitted their white murderers). Today urban black juries all too often put race above justice in the same manner.



Even in a society less racially polarized than ours, the Anglo-American jury system would be a bad idea. The progress of civilization can be measured by the distance between the idea of crime as a matter between the criminal and his victim's relatives (the feud, *wergild*), and the idea of crime as an offense against the impersonal, constitutional state. The twelve-person jury, which the Vikings bequeathed to Anglo-Saxon England, lies on the barbaric end of the spectrum. For all the refinements of the past millennium, the jury system bears the marks of its primitive origins. There's the magical number twelve (about which irrational debates occasionally erupt when the idea of ten- or eleven-member panels is suggested). And there's the competition between attorneys and the ritual of cross-examination, which resemble, respectively, trial by combat and torture (both of which, come to think of it, were also jurisprudential approaches of the ancient Teutons).

Though the news may come as a surprise, juries as we know them are limited to the English-speaking, common-law world. Most other Western democracies have inherited their system of criminal justice from the continental European civil-law (Roman law) tradition. The contemporary civil-law tradition is not, as Anglo-American propaganda would have it, one of authoritarian, "inquisitorial" justice, with all-powerful judges railroading helpless innocents. On the contrary, all civil-law democracies today provide for some form of trial by jury. In civil-law countries, however, the jury is typically made up of a small number of professional and lay judges. The professional judges bring their experience to bear in sifting the evidence; the lay judges prevent the professionals from acting on the basis of prejudice or politics. Yet another professional judge presides over the trial (in some countries, impartiality is further assured by three-judge tribunals).

The differences between the common-law and the civil-law approaches to criminal justice do not end with the composition of the jury. Grotesque battles over the admissibility of evidence like the Fuhrman tapes just do not occur in the civil-law world, where the trial is usually preceded by a relatively calm investigation and examination under the direction of the public prosecutor and an examining judge. The defendant is treated more fairly, in these early phases, than in the United States. According to Stanford Law professor John Henry Merryman in his study *The Civil Law Tradition*, "The dossier compiled by the examining magistrate is open to inspection by the defense, routinely providing information about the prosecution's case that in an American proceeding would be unavailable to the defense until its production was compelled by a motion for discovery or it was revealed at the trial." No surprise witnesses, no sealed evidence envelopes, no sleazy tricks during discovery.

Suppose that the United States, like France and Germany, had adopted its own national version of the civil-law system in the eighteenth or nineteenth century, in place of the British common-law inheritance—an American Civil Code, like the Code Napoleon or the Prussian Code. Suppose, furthermore, that O.J. Simpson had been tried for murder under civil-law rules. How likely is it that the Simpson trial, in those circumstances, would have degenerated into an appalling spectacle of dirty ticks and bizarre legal hairsplitting? How likely is it that Johnnie Cochran would have played the race card and asked the jury to send a message to the L.A. police, if the jury had consisted of, say, Judge Ito and several other professional magistrates, as well as a few laymen? And the outcome of the Simpson case in a civil-law America? According to professor Merryman, "a statement made by an eminent comparative scholar after long and careful study is instructive: he said that if he were innocent, he would prefer to be tried by a civil-law court, but that if he were guilty, he would prefer to be tried by a common-law court."

I realize, of course, that by suggesting that we Americans might actually learn something from other countries I am questioning the dogma that the political and legal system of the United States has been perfect since its immaculate conception in an act of collective parthenogenesis by the Founding Fathers. The rules of

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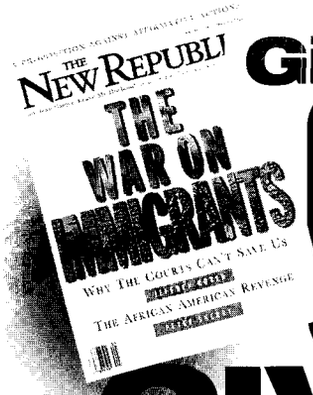

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American public discourse hold that no innovation in government or jurisprudence unknown to Americans before 1800, no matter how potentially beneficial, can be suggested for adoption; the opportunity for fundamental political and juridical thought in the U.S. came to an end with the close of the Founding era, rather as divine revelation is thought by Christians to have ceased at the close of the Apostolic Age.

While an intellectual tariff prevents the import of institutional improvements from abroad, Americans are free to export our superior system to the rest of the world. Indeed, doing so is something of a patriotic duty. Otherwise-educated Americans who happen to be completely unaware that our legal tradition is an eccentric deviation from the main tradition of Western jurisprudence do not hesitate to evangelize on behalf of the American Way in matters like criminal justice. In the first few years after the revolutions of 1989 in

Quit worrying

In 1991, at the end of the Gulf war, I started to write but never finished a longish piece on how the conflict in the Persian Gulf might change America. The lightning-quick victory over Iraq, I thought, would lead to a celebration of what government could do. With faith restored in the public sector, liberals could cheer George Bush's war. I went even further: blacks and women would, I argued, demand their due back home after their sacrifice in the Gulf, sparking an era of activism not unlike the years following World War I and World War II when the suffrage and civil-rights movements got a boost.

The piece never ran, and boy am I glad it didn't. I was spectacularly wrong; the Gulf war seems to have had no lasting effect on the body politic. I suspect the same will be true of the Simpson verdict.

The same pundits who said the Simpson jury would take weeks to deliberate are now lamenting that the trial was a signal event in American race relations—exposing cleavages and exacerbating them. Perhaps. Yes, blacks and whites tended to see this case differently. They see a lot of things differently; just look at political-party affiliation or who watches what TV shows. But it's important to remember that from day to day, those differences tug on the country but they don't tear it. When it comes to courts, arguably the area of American life where the black and white gulf is at its widest, African Americans vote to convict African Americans all the time.

The charge that the jury system—and, indeed, the country—is infected by some kind of unhealthy tribalism is exaggerated. The Simpson verdict says less about a new racial divide and more about the longtime habits of jurors, black and white, who regularly fail to convict people who either appear, or in fact are, guilty. It shouldn't unduly surprise or dismay us that O.J. Simpson, like William Kennedy Smith, walks freely among us. A few weeks ago this magazine pointed to Los Angeles's twentysomethings as proof that the country was not descending into a multicultural abyss. (See "Not-So-Clueless," TNR, September 4.) Such a cautionary note is worth remembering now that L.A. is being portrayed as a city divided.

Critics of Simpson's trial have pointed to the jury's hasty deliberations as proof of the lunacy of this verdict. Please. If the jury had decided in a matter of hours to *convict* Simpson, the very same people now decrying the speed of the verdict would be applauding the jury's decisiveness. The fact is that the jurors, like the rest of us, made up their minds awhile ago, despite the hopelessly unrealistic judicial admonition not to form any opinions. This let-your-mind-go-totally-blank instruction never works when I've tried to meditate; it seems especially absurd when you figure these poor jurors have had to endure the ultimate Outward Bound experience. For more than a year they've been stuck in a time capsule, with nothing else to do but ponder the evidence. No wonder they decided quickly.

Are there sensible jury reforms to be enacted as a result of this case? Sure. Sequestration will hopefully fade from the legal scene like yesteryear's powdered wigs. Isolation in a modern society really is cruel and unusual punishment; and the proof that exposure to "publicity" will sway a juror one way or another seems dubious. It probably would have been better if, as some observers claim, the jury could have been more engaged, asking questions of the lawyers, talking among themselves. But the biggest reforms ought to be aimed at the police, not juries. That Mark Fuhrman should have been banished from the LAPD is, by now, a cliché; what's less remarked upon is that rogue cops seem to have insinuated themselves into too many American police forces. Philadelphia's police department, for one, has had to throw out dozens of cases after it emerged that police had set up victims and fabricated evidence.

The sloppiness and malevolence of such police work, decried by this magazine and others in the case of Waco, is fuel for the paranoids among us. Hatred of law enforcement is now a rallying cry on the left and right. The Ruby Ridge Republicans can't get enough of FBI and ATF bashing; black leaders direct their ire toward local police forces. Such wholesale suspicion of government is disheartening. But neither is it so unjustified or so widespread that it's worth despairing. Remember that as the O.J. verdict was read the most popular man in the country was an African American retired general. If suspicion of men in uniform dominated the landscape, if tribalism were out of control, then there would be no national hero called Colin Powell.

During mega-dramas such as the Simpson trial, conjecture and symbol-mongering are irresistible, inevitable. The space shuttle explosion was dubbed a loss of innocence; the Grenada invasion was supposed to usher in a new era of American confidence; the Clarence Thomas-Anita Hill hearings were going to spark a generation of feminist activism. But in a complex culture no one event can be so defining because we're always on to the next. The Simpson verdict—rendered, after all, by blacks, whites and a Hispanic—may have been wrong, but neither is it cause for woeful handwringing. It's the converse of the famed Baby Jessica case, when a girl slipped down a Texas well and the nation was riveted by her rescue. That event, albeit smaller in scope, supposedly united the country just as Simpson's trial supposedly divides it. Neither is true. Both are mere moments in a country that is a paradox: divided and yet, mercifully, very much whole.

MATTHEW COOPER

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Europe, when post-communist states in Eastern Europe and Eurasia were debating different models of democratic constitutionalism (and usually concluding that the West German model is preferable to ours), a great number of representatives of the American bar flew into Eastern Europe to sing the praises of our malfunctioning separation-of-powers system and our even more disastrous jury system. My God, I remember thinking at the time, haven't the Eastern Europeans suffered enough?

We put up with an electoral system and a constitution in wigs and buckled shoes; why not tolerate a criminal justice system that wears a horned helmet and a bear skin? Here's why we should be concerned: the defects of our particular inherited structures of democratic and constitutional government may be mistakenly interpreted by an alienated public as failures of democracy and constitutionalism as such. The result of such unwarranted but understandable pessimism might be support for plebiscitary rule in politics and, perhaps, vigilantism in law enforcement. Huey Long will clean out the crooked statehouse; Charles Bronson or Clint Eastwood will punish the murderers who get off on technicalities. Legality cannot exist for long in the absence of legitimacy. In a contest between a law that seems to regularly produce unjust outcomes and extra-legal justice, rough justice in some form will sooner or later prevail. (How many people have *you* heard say, in response to news of Simpson's acquittal, "Maybe somebody will give him what he deserves?")

To make the American system of criminal justice work will require intelligent reform, which in turn requires honest criticism and debate. Unfortunately, ever since Pearl Harbor, debate about fundamental institutional reform in this country has been deterred by the implication that critics of American political and legal institutions are traitors, with either "brown" or "red" sympathies. It is worth recalling that from the Civil War to Pearl Harbor we Americans progressed by junking large parts of the obsolete Anglo-American Colonial heritage

From King to Cochran

Regardless of the decision that twelve jurors finally made in the O.J. Simpson case, one fact is clear. Race became a central and misleading issue. Though too many blacks may know the bitter taste of racial discrimination, not all of us believe that truth and reason should be sacrificed in an attempt to vindicate past wrongs. The discrimination which Johnnie Cochran lamented in his closing arguments is part of my own experience. When I served as a member of the Air Force space program struggling to surpass the Russians in the mid-'50s, I was engaged in a larger struggle that continued after successful missile tests—the battle against bigotry and discrimination both on the military base and in the small town just outside its complex. To this day, I remember walking into the postal exchange and seeing a "humorous" postcard featuring a caricature of a wide-eyed black caught in quicksand, trapped between an alligator and an approaching lynch mob. I remember shopping in stores where blacks were not allowed to try on clothes before purchasing them. I remember the commonplace "colored" drinking fountains. And most of all, I remember the ever-present pressure of being in a town where blacks had more to fear from the local police than from the Klan. I had spent my nights in jail after being pulled over for "speeding," and, for years after my discharge, my heart would pound whenever the lights of a police car appeared in my rearview mirror.

Experiences such as these remain unhealed within the hearts of many blacks today—as Johnnie Cochran well knew. But to renew these wounds in others is unconscionable when a goal so fragile and so crucial as equality before the law lies in the balance. To go further and draw a racial imperative from the Simpson case is a dangerous embarrassment to the legacy of the civil rights movement.

In truth, the use of such tactics to benefit individual blacks in the criminal justice system was something the foremost civil rights champion, Reverend Martin Luther King Jr., diametrically opposed. When he was targeted by FBI Director J. Edgar Hoover, who hounded him in his private life and performed illegal taps on his phone conversations, King could have rallied a massive following, one that spanned boundaries of race, ethnicity and age, to come to his defense. He could so easily have played "the race card." Yet King would never use, for his personal defense, the movement that had been called together for a much larger goal.

King's practice and principles contrast starkly with those of former Congressman Mel Reynolds, whose parting words upon being sentenced for sexually molesting a minor were accusations that he was the brunt of a racist attack, or of Louisiana Judge Robert F. Collins who argued that he had been unjustly "targeted" because of his race when he was caught with $100,000 in marked bills that he had taken as a bribe in a drug case, or of Congressman Gus Savage, who sexually accosted a black Peace Corps worker while on a diplomatic visit to Africa and, nonetheless, enjoyed support from prominent black leaders who campaigned for his re-election.

Whatever the facts are in the O.J. Simpson case, we cannot allow the rich legacy of the quest for racial equality to be squandered for opportunist use of the "race card" strategy. If we do, the long-term impact on the black community will be disastrous. At a time when blacks are disproportionately the victims of crime, and when moral consistency and principled leadership is critical, we cannot allow the issue of race to eclipse the necessity of personal responsibility. We cannot allow those who enjoy the public trust—the politicians and celebrities who have been the primary users of the race card—to absolve themselves of responsibility for their actions. We cannot allow the door to be opened for opportunistic exploiters to escape accountability. They are exploiting African Americans as well.

ROBERT L. WOODSON SR.

ROBERT L. WOODSON SR. is president of the National Center for Neighborhood Enterprise.

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and eclectically importing institutional innovations from abroad: the research university, the polytechnic and the kindergarten from Germany, the secret ballot from Australia, workmen's compensation from New Zealand, the public museum from France. As Japan has done recently, we shamelessly copied other nations and frequently improved on what we copied. During that era of American flexibility and progress, Oliver Wendell Holmes Jr., nobody's idea of a flaming radical, observed in connection with the common-law tradition that the mere fact that a statute goes back to the time of Henry VIII is not an argument in its favor.

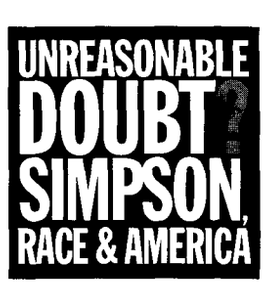
In the spirit of the enlightened conservatism of Justice Holmes, we need to audit our inherited institutions, rescuing what is vital by carving away the deadwood. We can begin by admitting that some of the foreigners who look aghast at spectacles like the Simpson trial actually may have something to teach us about devising a criminal justice system capable of telling right from wrong. •

The justice system and black America.

AFTER THE CHEERS

By Randall Kennedy

The acquittal of O.J. Simpson brings to an end an extraordinary criminal trial that attracted, like a magnet, anxieties over crime, sex, race and the possibility of reaching truth and dispensing justice in an American courtroom. The verdict is difficult to interpret since juries are not required to give reasons for the conclusions they reach and since, even if jurors do articulate their reasons, there remains the problem of deciphering them and distinguishing expressed views from real bases of decision.



My own view is that the verdict represents a combination of three beliefs. One is that the prosecution simply failed to prove that O.J. Simpson was guilty beyond a reasonable doubt. Reasonable people could come to this conclusion. After all, police investigators displayed remarkable incompetence, the prosecution erred mightily—remember the gloves that did not fit!—and, of course, there was the despicable Mark Fuhrman. Even with help given by several questionable judicial rulings before the trial and near the end, the prosecution did permit a reasonable juror to vote to acquit on the basis of the evidence presented. I disagree with that conclusion. But I do concede that it could be reached reasonably and in good faith.

If this belief is what prompted the decision of all twelve of the jurors who acquitted Simpson, their decision has little broader cultural significance than that reasonable jurors sometimes come to different conclusions than those which many observers favor. I doubt, though, that this belief was the only or even the dominant predicate for the acquittal. I say this based on what I have heard many people say and write about the evidence presented at the trial and also on the remarkably short time that the jury deliberated. If the jury was at all representative of the American public, particularly that sector of the public which leaned toward acquittal, it was probably influenced considerably by two other beliefs.

The first is characterized by an unreasonable suspicion of law enforcement authorities. This is the thinking of people who would have voted to acquit O.J. Simpson even in the absence of Mark Fuhrman's racism and the L.A. police department's incompetence and even in the face of evidence that was more incriminating than that which was produced at trial. There is a paranoid, conspiracy-minded sector of the population that would honestly though irrationally have rejected the state's argument virtually without regard to the evidence. One of the things that nourishes much of this community, particularly that part comprised of African Americans, is a vivid and bitter memory of wrongful convictions of innocent black men and wrongful acquittals of guilty white men. A key example of the former were the convictions of the Scottsboro Boys in the 1930s for allegedly raping two white women. Now it is widely believed that these young men were framed. A key example of the latter was the acquittal of the murderers of Emmett Till forty years ago. In the face of overwhelming evidence of guilt, an all-white jury in Sumner, Mississippi, took an hour and seven minutes to acquit two white men who later acknowledged that they had killed Till for having whistled at the wife of one of them. Asked why the jury had taken an hour to deliberate, one of the jurors declared that it would not have taken so long if they hadn't paused for a drink of soda pop. Some readers may find it hard to believe that these despicable events of sixty and forty years ago influence the way that people now evaluate people and events. But just as some in the Balkans remember battles fought 600 years ago as if they happened yesterday, so too do many blacks recall with pained disgust the racially motivated miscarriages of justice that they have helplessly witnessed or been told about. That recollection, refreshed occasionally by more recent outrages, prompts them to regard prosecutions against black men—especially black men accused of attacking white women—with such an intense level of skepticism that they demand more than that which should convince most reasonable people of guilt beyond a reasonable doubt.

A third belief is that to which Johnnie Cochran

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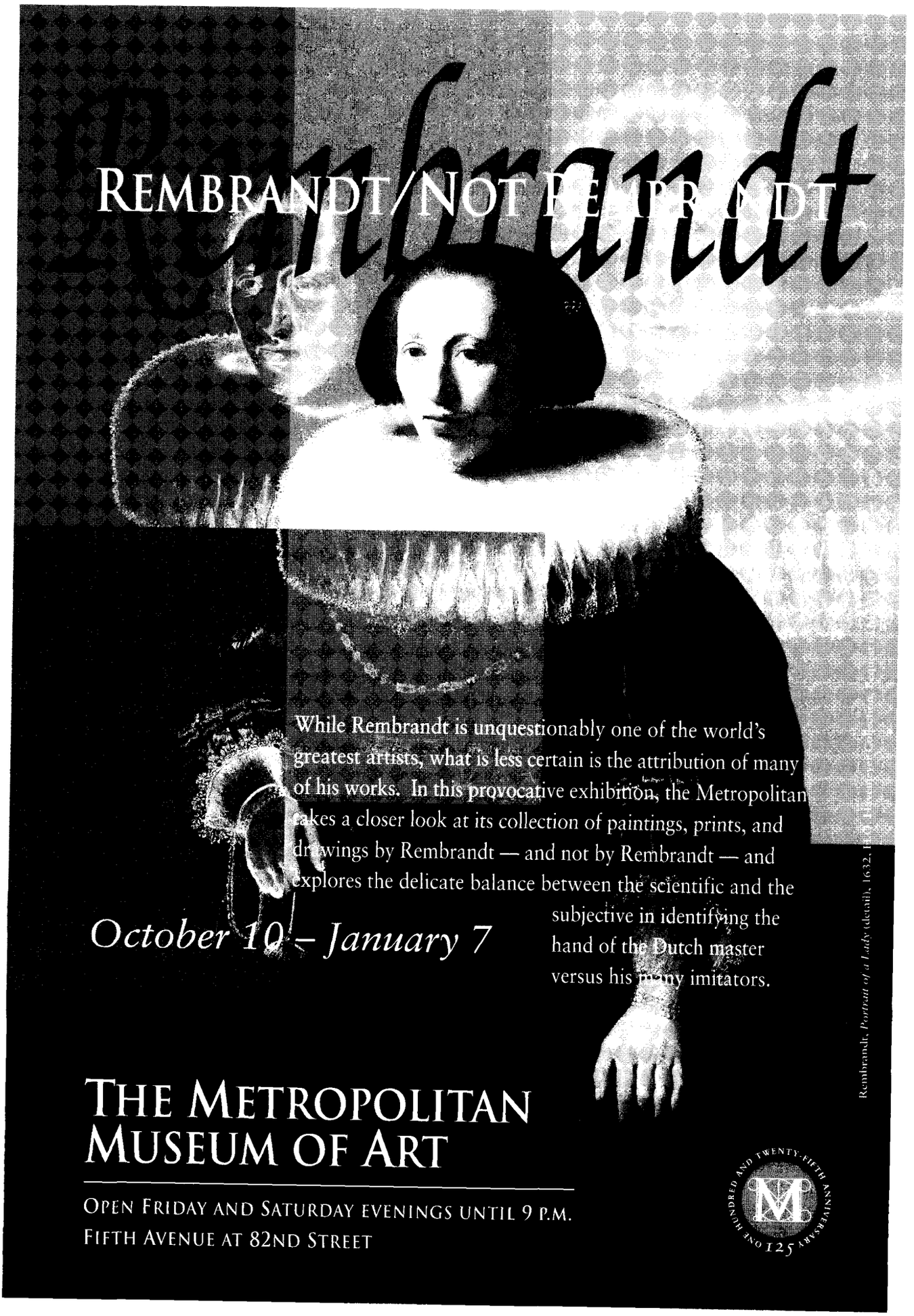
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appealed directly in his summation when he pleaded with jurors to help "police the police." This belief animates jury nullification. By nullification, I mean the act of voting for acquittal even though you know that, in terms of the rules laid down by the judge, the evidence warrants conviction. A nullifier votes to acquit not because of dissatisfaction with the evidence but because, in the phrase of choice nowadays, he wants "to send a message." In many locales, black people in particular want to send a message that they are way past tolerating anti-black racism practiced by police and that they are willing to voice their protest in a wide variety of

My race, my gender

Back in the '70s, when I was a community organizer in Maryland, I met the cold face of the Prince George's County police. I had run through a stop sign—a simple enough infraction, you might think, but as a result, I had been brought to the Mt. Rainier station for questioning. After a few minutes of badgering by the white cops, I quickly remembered what I'd learned years ago in Mississippi: I spoke only when I was asked a direct question and was sure to punctuate each response with "sir." Just a few weeks before, a man named Terrence Johnson had been arrested and beaten only a mile from where I was detained. When I walked away with my health and a mere citation, I considered myself extremely lucky.

Go to any neighborhood where African Americans and Hispanics live, and you will find carbon copies of my story by the score. There is a common experience of being wrongly accused, of being beaten on "G.P." (general principal) that binds together African Americans, especially those who lived through the days of Jim Crow laws. This history and memory have been passed down from generation to generation as family folklore, early lessons taught again and again.

Johnnie L. Cochran, the lead attorney for the Orenthal James Simpson defense team, understood that the legacy of mistreatment by the American judicial system cannot be fully divested from the individual or collective black psyche. Even before Simpson's murder trial got underway, Cochran and the "Dream Team" unabashedly telegraphed their strategy. If necessary they would play their trump—the Race Card. Given the L.A. police force's record of corruption, Cochran knew he could beat a full house.

O.J. Simpson was no hero for me. I don't rent Hertz cars. I hate football, never saw him run one of his famous and remarkable touchdowns and don't much care that he's in the Hall of Fame. That he was crossover king—a black man so successful in a white world that he and others forgot his ghetto beginning—is irrelevant; there are others like him. I am particularly appalled and greatly offended by his consistent abuse of women. First he abandoned his wife for an affair with a white girl nearly young enough to be his daughter. Then, after finally placing a wedding ring on her finger and fathering children with her, he pounds on her—more than once—as if she were a punching bag in his gym. His treatment of women alone made me ready to slap a guilty verdict across his chest.

But while the evidence seemed overwhelming in the beginning, Cochran and the defense team were effective at planting doubt: Was the DNA evidence properly handled? Was the crime scene contaminated? What was the exact time of death? The weapon remained elusive and an eyewitness absent; the prosecution's case unraveled under the intensive scrutiny of the defense attorneys, particularly Barry Scheck and F. Lee Bailey. But it was the tape recordings of a bragging racist that opened a hole in the prosecution's case the size of a Mack truck, that made the defense's case, even for a majority female jury.

And it was those Mark Fuhrman tapes, more than anything else, that allowed justice to escape from the Los Angeles Courthouse last week. The jury learned that Fuhrman perjured himself when he testified that he had never used the word "nigger" to refer to an African American. Perhaps even more devastating were the reports of his loathing for interracial couples and his remark that, given the opportunity, he might even plant evidence, hoping to charge them with a crime. This was salt in an old, unhealed wound.

Gone from the minds of the majority female and black jury were issues of spousal abuse; gone were the scenes of an obsessive and possessive, rejected husband who became enraged at the sight of his ex-wife in another man's arms. Gone were the questions about whether he did or didn't have time to commit the crime and still make his flight to Chicago. Like an amnesiac flashing back to a former life, the O.J. Simpson jury recalled with remote accuracy the pain of a people too often accused of crimes they had not committed. Cochran subtly raised the specter of Emmett Till—the young black boy brutally mutilated, killed and then drowned for talking with a young white girl. He reminded the jury about the Scottsboro Boys—the black Alabamans falsely accused of rape by two white women. He invoked the beating of Rodney King. These stories are compelling and tangible parables about the derailing of justice for black men in America. And while the female jurors may have been angered by Simpson's treatment of women, there is no stronger thread than race in America; no mightier discord than racism. The jury became deaf to closing arguments; their minds were made up. Simpson was just another African American male caught in the snares of the system.

I was sure that the result of Fuhrman's display of venom would be a hung jury. But it gave me pause—and hope—when the jury asked to review the testimony of the limousine driver, who had arrived at Simpson's house the night of the murder. Although he twice telephoned for Simpson, the driver said he did not receive an answer. He reported seeing a black man matching the former football great's weight and height entering the house; just moments after, Simpson finally answered his phone. I thought perhaps the public might witness a rare show of courage; I thought color-blind justice might actually be served in Los Angeles. But this was only the wishful thinking of someone longing to move past the pain and start anew.

In the end, racism proved, once again, the most powerful force in America. The system stands indicted. While this time a black man was not found guilty, for me, he does not walk away innocent.

JONETTA ROSE BARRAS

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ways, including jury nullification. Frustrated, angry and politically self-aware, some black citizens have decided to take their protest against racism in the criminal justice system to the vital and vulnerable innards of that system: the jury box.

In a certain way, the specter of this sort of jury nullification represents an advance in American race relations. Not too long ago, blacks' dissatisfactions with the criminal justice system could often be largely ignored without significant immediate consequence because whites, on a

The Simpsons

Asked by a New York television interviewer whether the controversy over O.J. Simpson's acquittal reflects differences of perception based on race, the Reverend Al Sharpton replied, "It's not the *perception* of race; it's the *experience* of race in the criminal justice systems" where blacks have been treated so differently for so long. A long road does run from the Scottsboro Boys, the Southern black teenagers falsely accused of raping a white woman in the 1930s, all the way to Simi Valley, where a mostly white jury acquitted Rodney King's assailants (for reasons even more dubious than those used to acquit O.J.) Such experiences have become archetypes, seared into collective black memory.

But Sharpton and his own one-time attorney, Alton Maddox, New York's Johnnie Cochran, know better than anyone how black "perceptions of race" have sometimes distorted even their bitter experience of it. And their own professional history has helped create another list of experiences that, this time, have seared into white America's consciousness.

In 1990, Sharpton brought Tawana Brawley—who had already been shown to have falsely accused white law enforcement authorities of raping her—to a Manhattan courthouse to shake hands with young blacks and Hispanics then on trial for raping and bludgeoning the Central Park jogger. In 1987, Maddox had nearly won an acquittal of a black man charged with slashing a white model, Marla Hanson, who, Maddox claimed, had framed the slasher because she was "a girl from Texas [with] a lot of racial hangups, racial stereotypes.... Just the simple sight of two black men ... and she went absolutely nuts."

In 1992, Lemrick Nelson, a black teenager charged with murdering the Australian Jewish scholar Yankel Rosenbaum in Brooklyn's Crown Heights, was acquitted by a mostly black jury whose members went out to dinner with him to celebrate their verdict. By now, these cases, too, have become archetypes. A road of bitter "experience of race" runs from Hanson and Steven Pagones—the assistant district attorney whom Sharpton and Maddox falsely claimed had raped Brawley—to the jogger, who has never recovered fully from her injuries, to the families of Rosenbaum and, now, of Ronald Goldman and Nicole Brown Simpson.

This is no way to escape the terrors of the past. It is a detour from the high road taken by the civil rights movement during the Emmett Till case. That movement's awesomely disciplined, even more awesomely loving marches shamed white America by insisting on embracing the larger society, not trashing it as inherently, eternally racist. It sowed seeds that bore fruit even in last year's retrial and conviction of the white man who in 1963 had assassinated Mississippi NAACP leader Medgar Evers. That movement was succeeding, wrote *New York Post* editor James Wechsler in 1960, because blacks "have refused to do wrong. They ... have been the victims of sadistic violence, legal subterfuge, government betrayal; in the face of early rejection and rebuff they have said simply that they will seek new recourse within the framework of our Constitution.... It is no disparagement of legal argument, I trust, to say that the condition with which we are dealing is morally intolerable."

But archetypes die hard. Seven years after Wechsler wrote, a young Alton Maddox, then a student in Newnan, Georgia, suffered a brutal beating at the hands of local police when he protested their order to move his car. Twenty years after that, in Brooklyn, Maddox managed to win acquittal for Andre Nichols, a 19-year-old black man who'd confessed to murdering a white priest who Nichols claimed had solicited him for sex.

Nichols said the priest had invited him into his car in a known pickup area. The priest had been unarmed; Nichols had had a gun, which he said he'd used because the priest had tried forcefully to detain him. Maddox got the mixed-race jury to acquit Nichols by trading heavily in the worst sort of reverse racism and hostility toward homosexuals, replete with imagery of the white sexual exploitation of black youth. The priest, Maddox said, had enjoyed "good food, good wine ... and now he wanted some good flesh."

Brooklyn District Attorney Charles Hynes, then the state special prosecutor in the Howard Beach case, recalls that "Maddox was totally prepared. The assistant D.A. on the other side seemed disinterested ... and [the jury] didn't like the case, what the priest was allegedly doing, out trying to pick up kids. They even acquitted Nichols of gun possession."

Perhaps the priest's conduct had been reprehensible, even immoral. But had he deserved *murder*? It took Maddox's race-baiting talents to seal the judgment. Less than a month later, Nichols was arrested for armed robbery and held without bail; Maddox went on to dubious glory with Sharpton in the Brawley case but was later suspended from practicing law for refusing to cooperate with a judicial panel's investigation of his counseling Brawley's mother to obstruct justice by refusing to answer a subpoena.

Now Johnnie Cochran's own defense teammate, Robert Shapiro, accuses him of having played the race card fast and low. Like Maddox, Cochran has mobilized searing black experiences of violation by white authorities to counter a lengthening list of ordinary whites' searing experiences of violation by blacks. Cochran has done this not on behalf of an Andre Nichols or a Tawana Brawley, but on behalf of a wealthy celebrity whom whites had befriended and loved. Lost in the faint but unmistakable look of satisfaction on the faces of Sharpton, Cochran and O.J.'s celebrants in the streets is the high road they have abandoned, for one strewn not only with Emmett Till, Medgar Evers and Rodney King but with Reginald Denny, Marla Hanson, the Central Park jogger, a murdered priest, Yankel Rosenbaum and, of course, the innocent victims of Tawana Brawley's false witness. Where do they think this road leads?

JIM SLEEPER

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racial basis, excluded them from decisionmaking. Invisible in courthouses, except as defendants, blacks could safely be permitted to stew in their own resentments. Now, however, because of salutary reforms, blacks are much more active in the administration of criminal justice and thus much more able to influence it.

Notwithstanding this advance, however, the current state of affairs as revealed by the Simpson case is marked by several large and tragic failures. The first and most important is the failure on the part of responsible officials to clearly, publicly and wholeheartedly abjure racism of the sort that Mark Fuhrman displayed during his hateful career as a police officer. Fuhrman's prejudice and his ability to act on it likely had much to do with O.J. Simpson's acquittal. His bigotry provided a vivid basis for the argument that the police framed Simpson. His bigotry also provided an emotionally satisfying basis upon which to follow Cochran's invitation to "send a message" by voting to acquit. In other words, the state inflicted upon itself a grievous wound when its representatives failed to establish a rigorous, anti-racist personnel policy that might have obviated the problem that ultimately crippled the prosecution most. Perhaps more headway on this front will now be made; practicality and morality dictate a more vigorous push against racism in law enforcement circles.

A second failure has occurred within the ranks of those who cheered the acquittal. I have no objection to cheers based on the assumption that the jury system worked properly, that is, cheers based on an honest and reasonable perception that the acquittal has freed a man against whom there existed too little evidence for a conviction. I get the impression, though, that there are other sentiments being voiced in the celebrations of some observers, including feelings of racial solidarity, yearnings to engage in racial muscle-flexing and a peculiar urge to protect the hero status of a man whose standing within the black community rose precipitously by dint of being charged with murder.

The failure of those moved by these sentiments is two-fold. First, such feelings can only predominate by minimizing the stark fact that two people were brutally murdered and by resisting the claim that *whoever* committed that dastardly deed ought to be legally punished, regardless of his color and regardless of the racism of Mark Fuhrman and company. To subordinate the need to convict a murderer to the need to protest the intolerability of official racism is a moral mistake. Both could have been done and should have been done. Contrary to the logic of Johnnie Cochran's summation, neither jurors nor onlookers were trapped in a situation in which they had to choose one imperative over the other. Second, as a practical matter, it cannot be emphasized too frequently the extent to which the black community in particular needs vigorous, efficient, enthusiastic law enforcement. As bad as racist police misconduct is, it pales in comparison to the misery that criminals (most of whom are black) inflict upon black communities. After all, blacks are four times as likely as whites to be raped, three times as likely to be robbed, twice as likely to be assaulted and seven times as likely to be murdered.

The problem of criminality perpetrated by blacks is the one that many black political leaders appear to have trouble discussing thoroughly. A good many prefer condemning white racist police to focusing on ways to render life in black communities more secure against ordinary criminals. That Simpson allegedly killed two white people makes him in some eyes far easier to rally around than had he allegedly killed two black people. This difference in sympathy based on the race of victims is itself a profoundly destructive racialist impulse, one deeply rooted in our political culture. But there is yet another difficulty with this particular racialist response. Like so much else about the Simpson case, the racial demographics of those who were killed was atypical. Because the more typical scenario features black victims of murder, those who claim to speak on behalf of blacks' interests should be extremely wary of supporting anything that further depresses law enforcement's ability to apprehend and convict those who prey upon their neighbors.

The O.J. Simpson trial is obviously a complicated event that will take years to understand more fully and place into proper perspective. At this point, however, the result, like so much of the trial itself, leaves me—normally an optimist—overcome by a sense of profound gloom.

RANDALL KENNEDY, a professor at Harvard Law School, is completing a book on race relations and the administration of criminal justice.

The failure of legal journalism.

SPORT TV

By Lincoln Caplan

The impulse to keep the overkill of the O.J. Simpson trial from happening again has rekindled the debate about whether cameras should be allowed in courtrooms. Momentum has shifted sharply to the con. But in fixing on trials and TV, the debate misses a larger insight from the Simpson coverage about the state of legal journalism. With or without the cameras, it's foundering badly.

At first blush, this notion must seem silly. Legal coverage has expanded enormously: from gavel-to-gavel TV

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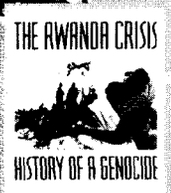

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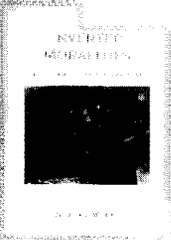

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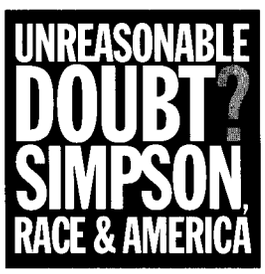
presentation of O.J.'s and many other trials, to talk shows that concentrate on sensational legal events, to print and radio showcases for glamorous, highly paid lawyers.

Because of the Simpson case, legal journalism appears to have moved from a specialized niche into a central place in the media. Virtually all the major media provided constant coverage of the trial. The major news magazines ran ten cover stories about it between June 1994 and April '95. CNN's ratings increased five-fold when it televised the Simpson proceedings. For cable TV watchers, it's been possible to catch perspectives on the trial from ex-judges, ex-prosecutors, ex-U.S. Justice Department officials and ex- and current defense lawyers. There were so many newly minted pundits it was hard to keep count. Larry King introduced one guest by saying, "And here's a lawyer who, to my knowledge, no one has interviewed before!" (Oops. That was about the Susan Smith trial. It's almost as hard to keep the trials straight.)

The new legal journalism is different from the old. It's more comprehensive, more direct and more accessible. One of its premises is that, with the opportunity to witness legal proceedings in their entirety, viewers are better able to take or leave the opinions of reporters and experts, to "judge for themselves." It prides itself on substituting technology for judgment, however, and that isn't really journalism: it's information delivered without knowledge, often escorted by opinion without explanation and soothsaying without heed of consequences. It treats the law fundamentally as a game of stratagy—a tendency exemplified by the TV coverage at the close of the Simpson trial, when virtually everyone in the pack of predictors (How long did you say the O.J. jury would take to reach a guilty verdict?) was proven wrong.



But that's only part of the problem. The new legal journalism is defined as much by its approach to its subject as by its emphasis on access rather than inquiry. That was established long before the current surge of TV coverage—in part by the success of *The American Lawyer* magazine.

When *The American Lawyer* was launched in 1978, it presented itself as performing a public service by exposing the hidden workings of law firms and other legal institutions—the business of law. It also exposed how juries actually make decisions. The magazine became a shaper of a sharp-edged picture of reality that established a new order of status. Eventually printed on thick, glossy stock as an oversized tabloid, the monthly ran big photos and looming headlines that made their subjects larger than life. It went through various incarnations (muckraking, celebrating, predicting the future) and became the flagship of a company that includes nine local newspapers, a computer service called Lexis Counsel Connect and "Court TV." It set the character of the new legal journalism—of the kind of reporting that so clearly failed us in the O.J. trial. Its hallmarks are:

- Highlighting the machinations of the legal process and the lawyers who move it along rather than the substance and the drama of ideas;
- Treating the legal world primarily as a self-contained, isolated universe;
- Maintaining a focus on the present scene of some proceeding and excluding the kind of instructive sense of history that characterized classics of legal journalism like Anthony Lewis's *Gideon's Trumpet*;
- Offering, in place of a narrative whose explanatory power derives partly from its wholeness—its ability to line up events, characters, legal ideas and their consequences in a meaningful order—a collection of picked-over, often picayune fragments.

The potential for distortion in this kind of coverage was ludicrously apparent in NBC's broadcast last Tuesday, when anchorman Tom Brokaw counted down the minutes until the Simpson verdict as if it were the dropping of the New Year's ball in Times Square or the last moments of a football game.

In theory, the new and the old styles of legal journalism liberate each other to do what each does best. In reality, the new is driving out the old. Despite its small circulation (21,000 at its highest), *The American Lawyer* and its sister outlets have had a tremendous impact on how other media present the legal profession.

The general-interest press now relies, for example, on *The American Lawyer*'s bestowals of status in the profession, especially its rankings of law firms. The magazine zeroed in on a blunt, tantalizing measure of ultimate success—how much money lawyers make. The elite general media have followed this lead in deciding whose expertise to highlight. Former staffers from *The American Lawyer*'s empire have turned up as high-profile legal reporters for the general media—NBC's Jack Ford and ABC's Cynthia McFadden, to name two. More importantly, the style of the new legal journalism is influencing the substance of reporting in the general press. Legal journalism is increasingly like sports and political reporting, a form of play-by-play. It is preoccupied with topicality, narrowly defined. Its main criterion is who's winning and losing and how—as the who's-hot-who's-not coverage of both legal teams in the O.J. trial showed all too clearly—without much regard for why it matters.

While legal journalism appears to be booming, then, the dominant version offers coverage that isolates the law from the world it reflects and shapes. Followers of the new legal journalism may pick up lawyerly lingo, but they get little guidance in understanding the significance of the events reported or even in following the narrative of those events. As coverage of the Simpson trial underscored, the new legal journalism is providing an unprecedented amount of information, but too little help in making sense of it.

LINCOLN CAPLAN, a lawyer, is the author of *Skadden: Power, Money, and the Rise of a Legal Empire* (Farrar, Straus and Giroux).

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RACE MATTERS

By Hanna Rosin

Ten minutes into the September meeting of the University of California's Board of Regents, the students in the audience start to hiss. Down in the auditorium pit sit twenty-four regents—fourteen of whom voted in July to rescind affirmative action in university admissions and hiring. This morning the regents nervously sip their water, flip through the paper, anything to avoid the 200 angry glares above. "I'm in the fucking meeting now," the pouting Filipina activist sitting next to me scribbles in her diary. "Some fat white men in suits are babbling about some bullshit."

At least she keeps it to herself. Most of her friends do their fulminating during the public comments session. "Don't you fucking racists tell me I'm not qualified to be here," fumes Edward, a freshman from Los Angeles. "Now what will my little brother do?" Next at the podium is Hatem, a Palestinian graduate student who heads a group called Diversity in Action: "I'd like to address Ward Connerly, a loyal friend of Pete Wilson," he begins, referring to the black regent who led the crusade to kill minority preferences. But before he can finish, a black man sitting in front of me interrupts: "House nigger," he shouts. "Uncle Tom."

All this nasty name-calling makes it tempting to dismiss the students' complaints out of hand. But the fact is, they are onto something. In the first place, they are not the only ones booing. At the July meeting, the U.C. president, the chancellors of each of the U.C. system's nine universities and dozens of professors lined up to protest the quashing of affirmative action. But the regents ignored them, and passed their resolution, just as Pete Wilson was trying to shore up a sagging presidential bid with his own attack on affirmative action. (This timing was no coincidence: as governor, Wilson is president of the board of regents and has appointed several of its current members.)

In caving to Wilson, the regents wiped out a rare model of racial compromise. It's true that some U.C. admissions policies needed fine-tuning. But the regents had in their midst—and chose to ignore—a workable model for reform: U.C. Berkeley's undergraduate admissions policy. Over the past decade, the policy had been reworked several times to arrive at a delicate balance. It scrupulously avoided quotas, drew only from a qualified pool of applicants, weighed race against several other factors and quickly removed ethnic groups from its list as their lots improved. In short, it achieved what the convulsive national debate on affirmative action has been seeking: the elusive middle ground.

The seed for the regents' backlash was planted last summer, when a frustrated father named Jerry Cook showed up at Connerly's office with his wife, Ellen, and a blue binder full of numbers. Their son, James, had been rejected at U.C. San Diego medical school, while blacks and Chicanos with significantly lower GPAs and MCAT scores were accepted. "When I finished that meeting there was no doubt in my mind that the reason he was turned down was because he was white," explains Connerly. He then placed the definitive call to U.C. President Jack Peltason: "Jack, I just met with these people. Is it true we're admitting medical students on the basis of their race?" Next he called the governor, who pounced on the opportunity. By July, the two had convinced a majority of regents to join their revolt.

When they drafted their resolution, the regents left in place only one instruction to admissions officers. In a fit of penitence, Governor Wilson himself scribbled in a directive which encourages the worst kind of victim-creep. Blending self-help jargon with the soothing tones of Victorian paternalism, it reads: "Consideration shall be given to individuals, who, despite having suffered disadvantage economically or in terms of their social environment (such as an abusive or otherwise dysfunctional home or a neighborhood of unwholesome or antisocial influences) have nonetheless demonstrated sufficient character." Good news for the Patti Reagans of California, where the divorce rate pushes an unwholesome 60 percent, and self-help gurus spy dysfunction in every home. But then, by "unwholesome" and "antisocial," he probably just meant poor.

Meanwhile, the real answer to Cook's complaint was there all along. Connerly's bottom line on affirmative action is this: "How can you tell the son of a wealthy black doctor from Massachusetts that he gets in, while if you're Vietnamese and your mom and dad run a doughnut shop and get up at 4 a.m. every morning you don't?" This is precisely the complaint that prompted Berkeley's earlier soul-searching affirmative action reform. In the late 1980s, Asian students and faculty hounded the admissions office, accusing the university of forcing Asians to meet higher standards. Their backlash prompted an investigation by an internal task force as well as the Office of Civil Rights of the U.S. Education Department. Within a year, their cause became a rallying cry for George Will and friends, who were eager to embrace nonwhite victims of the preference wars. Late that year, Republican Representative Dana Rohrabacher opened congressional hearings on the U.C. system. With all the attention, Berkeley had to do something.

What they did was draft a new admissions manifesto, known as the "Karabel Report," after its author, sociology professor Jerome Karabel. In concession to Asians, the new policy loosened what were previously rigid and substantial minority preferences. First, it increased the

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percentage of students accepted on the basis of merit (meaning grades and SAT scores) alone to 50 percent. It ended the guarantee to accept all minorities who meet minimal U.C. eligibility standards—ranking in the top 12.5 percent of California high-school seniors. It created a few new categories of special admissions, most importantly, for "socioeconomically disadvantaged" students. And it phased out preferences for Latinos and Filipinos. At the time, black students circulated posters blaring "YO! WAKE UP! NEW ADMISSIONS POLICY EXTERMINATES OUR PEOPLE FROM CAMPUS."

Although their fears were not unfounded, the new policy struck a happy utilitarian balance, maintaining some diversity while keeping most people satisfied. The percentage of black freshmen did drop from 12.5 to 6.2 percent. But those who got in were better prepared, with higher grades and SAT scores. (Last year, the average GPA for black students was a 3.43, compared to 3.89 for whites.) The graduation rate for blacks four years after entering Berkeley still hovered at a troubling 30 percent, but that doubled after six years of enrollment, making it much higher than the national average of 37 percent. And black students who get their diplomas boast grades as high as any graduate.

The rest of the class had no complaints. The Asian presence nearly doubled, from 19.2 percent to 37 percent. In a show of solidarity, the campus's main Asian group even printed up flyers this semester protesting the regents' decision. In fact, except for some nasty hate mail dropped anonymously in black law students' mailboxes last winter, there were almost no gripes about the policy.

No doubt, Berkeley's racial engineering still has its pitfalls. Several professors, many sympathetic to affirmative action, lamented that a scattering of freshmen were woefully unprepared, "dropped in the tank and left to flail," as one put it. Still, this price often buys a lively classroom dynamic. Says David Cohen, a professor of rhetoric who guest teaches at the University of Chicago and is not sure if he supports affirmative action: "The best students are the same as at Chicago, and at the low end, there are some who have great difficulty with a grammatical sentence, which would never happen there. But here, the things they know are much broader than the typical Ivy League elite. They are much more courageous. At Chicago, they are very respectful, not just of me, but of Kant and Hegel. Here, they'll say anything. Sometimes, it's stupid. But a lot of times it makes for very interesting class discussions."

Berkeley's campus culture is not immune from racial balkanization. Since the 1978 *Bakke* decision, American universities are allowed to claim only one rationale for promoting diversity: the kind of racial mixing that contributes to the education of all students. But a stroll around this campus will leave you dubious. On Friday evenings, the black students kick back at a step rally in the main plaza, while to their right, behind a metal fence, crews of white fraternity brothers chug down beers at the Bear's Lair. The university hosts a black theme house and an orientation class for black freshmen called "Their University or Ours."

And Berkeley's infamous American Cultures requirement, designed to "promote understanding of race and ethnicity in American society," doesn't always help the cause of integration. For a course to count toward the American Cultures requirement, it must be designed to incorporate material covering at least three of the following racial groups: African Americans, indigenous peoples, Asian Americans, Latinos or European Americans. Classes that meet the requirement are taught by professors in almost every department—history, environmental science, even library science (how classifications reflect racial bias). The committee that approves new courses has been known to police racial distinctions strictly, sometimes with absurd results. In one case, for example, a professor applying to teach a class on the literature of immigrant groups in New York in the 1920s suggested focusing on Asians, the Irish and Jews. Her proposal was rejected on the grounds that both the Irish and the Jews are white—never mind that nearly all New York immigrant groups at the time *were* white. In the end she resorted to teaching some books by Latinos living in Miami.

So Berkeley's policy wasn't an antidote to racial separatism. It was, however, a remarkably flexible and fair-minded strategem for ensuring some diversity without rigid quotas. And it would be particularly perverse for a public institution like Berkeley to ignore calls for diversity or paper over racial tension, nowhere more evident than in California. The most coherent defense of affirmative action in the U.C. system I heard came from Robert Post, a professor at the law school. "We're a public institution, and we have a political function to create a public culture," he argues. "It's not a matter of entitlement, or recognizing victims, but rather of making a positive decision that one of the university's roles is to help heal racial rifts."

Ward Connerly agrees the playing field is not level. "If we think our job is done now we've missed it," says Connerly. "The question is, how do we as a people relate to each other as individuals?" But coming from a man who now talks to the governor daily, his solutions seem hollow, at best naïvely blinkered. "I was in Vegas this morning at a meeting, and I had on a polo shirt with a Bugs Bunny on it. This white man sitting next to me said, 'Hey, I like your shirt.' It broke a barrier. We need to do more of that in our society."

Berkeley administrators are less credulous. Two weeks into the start of this semester, Berkeley Chancellor Chang-Lin Tien held a press conference at Fremont High School in East Oakland to sign the Berkeley Pledge, committing $1 million to recruiting efforts. "We care deeply about preserving diversity," he told an audience of nervous black and Hispanic high-school kids. "We care about serving you." Fremont is a school, like dozens of others in California, where most of the students are black or Chicano, and poor. Only half of them will graduate, and maybe one lucky senior out of 500 will even be eligible for U.C. admissions. Granting that lone achiever a small advantage is the least the university can do. •

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Why President Clinton should veto the welfare bill.

Welfare is the ultimate security policy for every woman in America. Without it, we have no real escape from brutal relationships or any protection in a job market hostile to women with children.

The public program that benefits struggling women most — Aid to Families with Dependent Children — is now considered fair game in Washington. This assault on poor women will leave all of us more vulnerable than ever.

Those who want to cut welfare assume the American job market is hungry for untrained, unskilled workers. It's not. Mothers shoved off welfare will not find jobs waiting. And the welfare legislation in Congress cuts funding for job training and education. Even if a mother finds a job available, chances are it won't pay a living wage that's enough to cover health care, let alone childcare.

Even with "improvements" added by the Senate, the bill coming out of Congress would allow the richest society on earth to break its most fundamental pledge to women: that if the worst happens, a woman can keep her children with her, with food on the table and a roof over their heads.

Most women on welfare need help for just two years.

Punitive welfare reform won't guarantee jobs at living wages, improve health care, or provide affordable childcare. It won't do anything but complete the humiliation of women who have no other choice and hurt our poorest children.

American women have little to gain and everything to lose if this bill becomes law. That's why we ask you to act quickly.

Write or call President Clinton today urging him to VETO this cruel legislation. Call (202) 456-1111, fax (202) 456-2461, email to president@whitehouse.gov, or write to The White House, Washington, D.C. 20500.

To support this effort, please send your contribution to:

Women's Committee of One Hundred
750 First Street. NE,
Washington, D.C. 20002

The Women's Committee of One Hundred represents a new mobilization of informed women — including prominent scholars, activists, elected officials, professionals and artists — pledged to defend women's security.

A typical woman on welfare is in her late 20's and has two kids.

[1] Only 8% of welfare mothers are teens.

[2] The typical welfare family includes a mother and two children, the same as the typical U.S. family.

[3] Welfare families receive an average $367 a month. Add $295 in food stamps and that's still 31% below the poverty line. In fact, welfare benefits have dropped one-third in value since 1979.

[4] Welfare to single mothers makes up just 1% of the federal budget—3% if food stamps are included.

[5] 38% of welfare mothers are white, 37% are African-American, 18% are Latina.

[6] Over 70% of women applying for welfare take benefits for less than two years; only 8% remain over eight years.

[7] More than 60% of welfare families have a child under six; 40% have a child under two.

[8] A job at minimum wage puts a mother and two children $3,000 under the poverty line, with no health coverage.

[9] Careful research has found that welfare benefits do NOT influence a never-married woman's decision to have a child; nor do they influence mothers already on welfare to have more.

[10] Most AFDC recipients have been employed but aren't covered by unemployment benefits. Because of restricted eligibility, 3 times as many single mothers turn to welfare as to unemployment insurance when they lose their jobs.

Photos by Maggie Hallahan, Network Images

A war against poor women is a war against all women.

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DISORIENTED

By Jeffrey Rosen

Two years ago in a Denver courtroom, when we last encountered the anti-gay rights case *Evans* v. *Romer*, Professors Martha Nussbaum of Brown and Robert George of Princeton were wrangling about the proper translation of *tolmêma*, Plato's adjective for homosexuality. Nussbaum said "deed of daring"; George preferred "abomination." (See "Sodom and Demurrer," TNR, November 29, 1993.) In its journey up to the Supreme Court, however, the case has been transformed from one about the definition of homosexuality to one about constitutional limitations on plebiscitary democracy. State and federal courts in Colorado and Ohio, in striking down anti-gay rights initiatives, have come close to suggesting that direct democracy is itself unconstitutional. If the Supreme Court agrees, then the wave of ballot initiatives sweeping across the Western states, including the anti-affirmative action referendums that are pending in California and Washington, could be stopped cold.

But the Supreme Court is unlikely to agree. The notion that anti-gay rights initiatives violate the "fundamental right to political participation" of gay voters, as the Colorado court held, is nebulous and unconvincing, and the justices will almost certainly reject it. There are more modest arguments for striking down the initiative—it's irrational, perhaps, for Colorado to deny civil rights protections to homosexuals that are extended to virtually every other group of citizens, including married people, veterans and smokers. But none of these arguments is entirely persuasive. I'd gladly vote against the anti-gay rights initiative as a citizen of Colorado, but that's not the same as saying it's unconstitutional. Indeed, if the initiative is construed narrowly rather than broadly, the Court probably should, and probably will, uphold it.

In November, 1992, 53 percent of the voters of Colorado ratified Amendment 2 to the Colorado Constitution:

> NO PROTECTED STATUS BASED ON HOMOSEXUAL, LESBIAN, OR BISEXUAL ORIENTATION. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have, or claim any minority status, quota preferences, protected status or claim of discrimination.

What, exactly, does this tortuous sentence mean? If you read it as expansively as possible, the last phrase of the Amendment, prohibiting "claims of discrimination" on the basis of homosexual orientation, could sweep away all efforts by state government to protect gay people from private *and public* discrimination, including police regulations requiring equal enforcement of the criminal laws; protections against arbitrary dismissal of state employees; state university non-discrimination policies; state regulations of the insurance industry, and so on. But, read as narrowly as possible, the Amendment might have few practical effects because homosexuals may already be protected by generic laws forbidding discrimination on the basis of factors unrelated to the task at hand. Amendment 2, on this reading, may be nothing more than a refusal by the state to affirm the legitimacy of homosexuality as such. Which of these two readings is correct is the critical—and almost impenetrable—issue in the case.

"Equal rights, not special rights," proclaimed Amendment 2 bumper stickers; but the *Romer* case shows that it's not easy to distinguish equal rights from special rights in an age when anti-discrimination laws are the norm rather than the exception. In his new book, *Virtually Normal*, my colleague Andrew Sullivan argues that "all *public* (as opposed to private) discrimination against homosexuals be ended." Sullivan would ban "all proactive discrimination by the state against homosexuals," including discrimination by police officers, government agencies, the military and marriage bureaus, but he opposes civil rights protections for gays in the "private sphere," and he would permit private employers and landlords to discriminate against or in favor of homosexuals as they pleased.

Sullivan's classically liberal distinction between public and private discrimination is conceptually pure; but, as the messy reality of Colorado shows, it has been largely overtaken by the rights revolutions of the post-New Deal administrative state. If we lived in John Stuart Mill's England, where private employers were free to fire their employees at will, it would be easy to applaud Amendment 2 for ensuring that homosexuals have the same protections every other group has against being fired without good reason—namely, no protection at all.

But Colorado in 1995 looks nothing like Colorado in 1895. The private sector is now so pervasively regulated that private employers and landlords are treated more like public utilities than like mom-and-pop proprietors; and the libertarian ideal of freedom of contract has been largely repudiated. In 1990, after heavy lobbying by the tobacco industry, Colorado adopted a "Smoker's Bill of Rights" which prohibits private employers from discriminating against their employees on the basis of any legal off-duty conduct. Sodomy, like smoking, is legal in Colorado. And in many cases, homosexuality is simply defined as the propensity or habit of practicing

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sodomy. In other words, the civil rights laws of Colorado today appear to protect *all* citizens from irrational public and private discrimination. If protection against arbitrary discrimination is indeed the baseline of equal rights, rather than special rights, in Colorado (and this is open to question) then singling out homosexuals as uniquely unprotected by the web of protections that everyone else enjoys might plausibly be seen as a denial of the equal protection of the laws.

The proliferation of protected groups in Colorado also makes it harder to argue that anti-discrimination protections are a kind of special rights rather than equal rights. Private employers in Colorado are generally forbidden from discriminating not only on the basis of race, sex and religion, but also on the basis of disability, marital status, political affiliation and veteran status, as well as, in some cities, sexual orientation. As Judge Richard Posner asks in *Sex and Reason*:

> [I]s there any reason to exclude homosexuals from a protected category that already includes not only racial, religious, and ethnic groups but also women, the physically and mentally handicapped, all workers aged 40 and older, and, in some cases, even young healthy male WASPs? Is there less, or less harmful, or less irrational discrimination against homosexuals than against the members of any of these other groups? The answer is no.

Nevertheless, striking down Amendment 2 as entirely irrational would be a very aggressive position for a judge to take: few citizens really believe that classifications based on sexual orientation are, in all circumstances, entirely unreasonable. In the spirit of judicial restraint, therefore, it might be possible to read the Amendment in a way that minimizes the constitutional difficulties, rather than exaggerating them. At the trial and in its briefs, the state of Colorado went out of its way to insist that firing a state employee because she was gay would indeed be arbitrary and illegal under current state and federal law. The point of Amendment 2, they insisted, was to prevent the state from passing special laws that *said so* explicitly. So perhaps the Amendment could be construed to forbid the state from passing laws that *explicitly* forbid discrimination on the basis of homosexual orientation; but not to prevent gays and lesbians from invoking neutral laws, like the Smoker's Bill of Rights, that prohibit arbitrary discrimination against all citizens.

This is a generous reading of a sloppily drafted Amendment; but it may capture something of the conflicted impulses of the more moderate supporters of Amendment 2, who claimed to oppose discrimination against homosexuals and, in the same breath, also claimed to oppose state laws that go out of their way to prohibit discrimination against gays. And perhaps the conflicted impulses aren't entirely illogical. The law, for better or worse, has an expressive dimension; and by adding sexual orientation to a list of less morally controversial characteristics, such as race and gender, some citizens may fear that the state is officially endorsing emotions and conduct that they would rather it didn't. In some ways, Amendment 2 is a civil, statewide version of "Don't Ask Don't Tell." It recognizes that homosexuals exist, even tolerates their private lives, but refuses to grant them any public recognition as equal citizens. Amendment 2 reflects the fact that many heterosexuals seem perfectly willing to extend equal rights to gay men and lesbians, as long as the rights aren't demanded too obviously. It's the anti-discrimination law that dare not speak its name.

Unfortunately, the central question in the Colorado case—what is the baseline for distinguishing equal rights and special rights?—may never be engaged by the Rehnquist Court, thanks to a baffling opinion by the Supreme Court of Colorado. Last October, the Colorado Supreme Court struck down Amendment 2, reaffirming its earlier holding that "[t]he right to participate equally in the political process is clearly affected by Amendment 2, because it bars gay men, lesbians, and bisexuals from having an effective voice in governmental affairs."

The weaknesses of this theory are obvious enough. The class of people affected by Amendment 2 is not all gay men, lesbians and bisexuals, but instead all citizens—gay and straight—who happen to support laws that prohibit discrimination on the basis of sexual orientation. And it is hard to see how this group, defined by its political views rather than its sexual orientation, is barred from participating in the political process. As the state of Colorado argues in its brief, no citizens have been disenfranchised, prevented from casting an equally weighted vote, or in any way hindered in electing the representative of their choice.

Of course, Colorado voters who support anti-discrimination protections for gays and lesbian must now seek change through constitutional politics, rather than ordinary politics. But no one has a right to have certain issues decided by representatives of the people rather than the people themselves. In its starkest form, the political participation argument evokes the most radical arguments of Lani Guinier, who suggested that competing groups of citizens are proportionately entitled to have their substantive political agendas actually enacted by legislatures, at least some of the time.

Stripped of its legalisms, the political participation argument is really an argument against plebiscitary democracy. Quoting James Madison on the dangers of majority factionalism, Julian Eule of UCLA argues that all of the filtering mechanisms present in ordinary legislative decisions—informed deliberation, political horsetrading, coalition building, and so forth—are dangerously absent in the crude, one-shot majoritarianism of a constitutional referendum. But this is a utopian view of the way legislatures operate. It's hard to argue with a straight face that the debate in Congress about, for example, the balanced budget amendment was more deliberate and soberly Madisonian than the debate among the citizens of Colorado about Amendment 2. Moreover, the anti-populists are quoting Madison out of context: the constitutional guarantee of a Republican Form of Government, far from expressing

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a suspicion of direct democracy, was in fact designed to protect the right of a majority of citizens to alter and abolish their governments as they pleased.

More convincing arguments are available, and the best of them appears in an exceptional brief filed by Laurence Tribe. Avoiding flamboyant claims about political participation, Tribe argues that Amendment 2 is a literal violation of the Equal Protection Clause of the Fourteenth Amendment, which says that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." By creating, for homosexuals, "a unique hole in the state's fabric of existing and potential legal protections" against the wrong of "discrimination," Tribe argues, Colorado has provided "a paradigm case of what it means for a state to structure its legal system so as to 'deny' to 'person[s] within its jurisdiction the equal protection of the laws.' "

When it comes to the administration and enforcement of *existing* state laws, Tribe is clearly right that gay men and lesbians in Colorado, in the wake of Amendment 2, have less protection than the most favored classes of citizens. For example, imagine that the police decided not to prosecute murderers in Colorado when the victims were homosexual. Homosexuals would, indeed, be prohibited by Amendment 2 from invoking the Denver police department regulation which provides that "Members [must] be of service to anyone ... in danger,... regardless of race,... gender, age or sexual orientation." But this wouldn't leave homosexuals any worse off than, say, left-handed people, who don't have the benefit of special police department regulations or executive orders prohibiting state officers from discriminating against them in the first place. (Left-handed people, however, arguably need special regulations less than homosexuals do.) And of course, homosexuals and left-handed people and everyone else continue to be protected by the federal Constitution, which protects all persons, regardless of their status, from arbitrary and irrational state actions.

The weakness of Tribe's elegant argument is that it relies on an unusually abstract definition of "discrimination." Tribe concedes that the Colorado Legislature has no obligation to adopt laws protecting homosexuals from private discrimination in housing or employment, making a distinction that puts him in uneasy agreement with Sullivan. He also concedes that if the Colorado Legislature *did* adopt civil rights protections for homosexuals, it would be free to change its mind and to repeal them. But he argues that the citizens of Colorado, in a popular referendum, should not be permitted to preclude homosexuals from receiving even the *possibility* of future protection under any state or local law "from an entire category of injurious conduct at least some of which is concededly wrongful." This is the point where Tribe's argument seems to break down. After all, firing a gay employee, or refusing to rent a house to a gay tenant, is *not* "concededly wrongful" in a state like Colorado that has declined to adopt laws banning employment or housing discrimination on the basis of sexual orientation. By defining the wrong of "discrimination" so abstractly, Tribe elides the difference between forms of discrimination that are and are not wrongful and illegal under state and federal law. Tribe is right that *some* of the discrimination that Amendment 2 insulates from challenge is "concededly wrongful." But then why shouldn't a court wait until it is confronted with particularly troubling applications of the Amendment, rather than striking it down across the board?

Finally, Tribe's argument falters a little in its definition of groups. A state may not, he claims, "set some persons apart by declaring that a personal characteristic that they share may not be made the basis for any protection pursuant to the state's laws from any instance of discrimination, however invidious and unwarranted." If Amendment 2 really does sweep this broadly, then he may have a point. But of course, most state laws and policies discriminate against certain groups on the basis of their personal characteristics. In 1979, for example, the Supreme Court upheld as perfectly reasonable the New York City Transit Authority's policy of refusing to hire drug addicts. And couldn't the voters of New York, in their state constitution, prohibit the New York Legislature from overturning the policy by passing an anti-discrimination law for drug addicts? As long as drug addicts retained the right to challenge particular instances of unjustified discrimination under neutral laws, they would hardly be denied "equal protection." Of course, there are plausible arguments that gay men, lesbians and bisexuals should receive *more* legal protection than drug addicts or left-handed people, because sexual orientation originates in a deeper and morally neutral part of a person's identity, or whatever; but these are difficult and controversial arguments, and Tribe's powerful brief, for strategic reasons, declines to make them.

By reluctantly defending the constitutionality of Amendment 2, at least if it's read narrowly rather than broadly, I don't mean to minimize the indignity of a referendum that singles out a particular group of citizens and denies them the right to seek redress for "claims of discrimination" based on their deepest personal characteristics. Even if the Amendment has merely symbolic rather than practical effects, the symbolism is a stark and public insult to the dignity and equality of homosexual citizens. But the ambiguities of the *Romer* case are the inevitable result of an anxious transitional period, when anti-discrimination protections are often lumped together in the public mind with the travails of affirmative action and when the baseline for equal rights as opposed to special rights is hotly contested. This transitional debate is unlikely to be resolved by judicial fiat, nor should it be. It should be resolved by reasoned cultural and political argument. As the relatively close vote on Amendment 2 suggests, this is by no means a hopeless cause. And as the pro-life movement can attest in the wake of *Roe* v. *Wade*, there are worse things to be endured than a dramatic defeat by the Supreme Court. •

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Where We Stand

By Albert Shanker, President
American Federation of Teachers

A Community Speaks

What usually happens when a student takes it into his head to disrupt a class? I'm not talking about the occasional guffaw. I mean day after day of shouting out in class, threatening the teacher, and generally creating an uproar that makes teaching and learning impossible. Often, not much at all.

If the teacher is fortunate, the principal deals swiftly and firmly with the disruption before it becomes a pattern. That gives the troublemaker—and the rest of the class—a lesson in what will not be tolerated. But most teachers are not so fortunate. It's more likely that the student who is shouting and carrying on will get a couple of reprimands and a detention or two, and perhaps there will be a parent conference. Then, the problem is dumped right back in the teacher's lap. Things may improve, but then again they may not.

The jury found that Bray had "exceeded the bounds of common decency...."

Frances Cook, a teacher in Campbell County, Kentucky, was not one of the fortunate ones. In 1993, Andy Bray, a student in her Spanish class, undertook what seemed to be a systematic campaign of disruption and harassment. He was repeatedly tardy and used obscene words and racial epithets. Cook, who was a teacher with 24 years of experience, tried various ways of disciplining him, including a call to his mother, but nothing helped. As Bray's Spanish vocabulary increased, so did his offensive behavior. After the class learned the word *matar*, which means to kill or murder, he repeatedly yelled out the word in class. He told Cook that he was going to kill her, and even after he had been forbidden to use the word, he said, in a Spanish skit, "This food is terrible. I'm going to have to kill the cook." One day he came into class after a fight with another student and asked Cook, "Have you ever been so mad you wanted to kill somebody?" The assistant principal suggested that Cook ask Bray privately why he continued to say that he wanted to kill her. Cook says he responded "very calmly and quietly...'probably because I do.'"

Didn't the district have a discipline code? Maybe so, but either it didn't amount to much or the administration was not enforcing it. Bray's only punishment for his outrageous behavior was...a parent conference. When the year was over, Cook breathed a sigh of relief, but the next year it appeared that Bray was going to continue his campaign, even though he was no longer Cook's student. Soon after school began, Cook retrieved a letter from Bray to some students in her class advising them on how to continue "the work" he had begun and "drive [her] over the edge." Bray's advice to his "disciples" included the following:

> From this day forward, if the person sitting next to you is being quiet or doing their homework, cuss them out in Spanish and cause a huge disruption. To frighten teacher, speak each day about different methods of murder.

When she took this letter to the administration, the only response was to give Bray 40 minutes of detention. So Frances Cook decided she had had enough. Occasionally, teachers who have put up with this kind of abuse sue the school district or the parents. Cook had another idea. Believing that Bray was the wrongdoer and should be held responsible for his behavior, she decided to sue him.

Several weeks ago, Cook received her vindication. Although Bray's lawyer tried to present him as a harmless "Dennis the Menace" character, a Campbell County jury knew better. It found that Bray had "exceeded the bounds of common decency as would be observed in any civilized community" and awarded Cook compensatory damages of $8700 and punitive damages of $25,000, which Bray will be expected to pay.

Cook v. *Bray* is not about using lawsuits to settle school discipline cases (although it suggests that, in extreme situations, teachers can look there for redress). Its real message is that ordinary citizens—like the twelve people on the Campbell County jury—believe outrageous behavior on the part of students should be dealt with severely. This should not be any surprise. Public opinion surveys have repeatedly made that point. It's time for school administrators to get it, too.

I've talked in recent weeks about the AFT National Campaign for Standards of Conduct and Standards for Achievement. *Cook* v. *Bray* underlines some of the campaign's basic points. If we expect learning to go on, classrooms must be orderly—and that means disciplining students who repeatedly disrupt class. At issue is not simply respect for the teacher; it is respect for all the other students and their right to learn. As the campaign proceeds, we will be working to get school districts all over the country to establish or modify discipline codes so that they are clear, fair, and enforceable and to establish alternative educational placements for violent or chronically disruptive students. To do this, we need to mobilize public support. *Cook* v. *Bray* shows once more that it is firmly behind us.

Mr. Shanker's comments appear in this ad under the auspices of the American Federation of Teachers. Reader correspondence is invited. Address your letters to Mr. Shanker at the AFT, 555 New Jersey Avenue, N.W., Washington, D.C. 20001. © 1995 by Albert Shanker.

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BOOKS & The Arts

Stanley Kauffmann on Films

Holidays and Other Troubles

Any film with Vanessa Redgrave in it, even in a small role, can't be all bad. Any film with Redgrave in a large role is unmissable. She has the lead in **A Month by the Lake** (Miramax); therefore ...

But there isn't much more in it than the pleasure of seeing her and two of her colleagues. The screenplay, adapted by Trevor Bentham from a story by H.E. Bates, is redolent of the lending-library fiction my grandmother used to read. It's mainly about two English people who, by chance, holiday in the same hotel on Lake Como. Redgrave is a woman of independent means, apparently, unmarried and unwistful. Edward Fox is a pukka sahib, lightly caricatured, a retired major now successful in business. A third principal is Uma Thurman as a capricious American nanny with an Italian family.

Redgrave is attracted to Fox much more promptly than vice versa. Thurman flirts callously with the major and starts a reaction that makes trouble for her. A young Italian hunk makes a play for Redgrave. A teapot-tempest ensues, not very exciting except for the quality of the performers and the beauty of the landscape. The political atmosphere—the year is 1937—gives it an edge, as Fascists parade in the town and Fascist thugs do some roughing up, but it's hard to see the relevance of this element. The year might as well have been 1987.

Yet Redgrave's admirers can see her doing some novel things—for her: playing tennis, running up long flights of stairs, diving into the lake, riding on the back of a motorcycle. All this in addition to less novel things: acting with finesse, charm and an authenticity that lends a bit of body to the gossamer story. Fox is, by design, pathetically funny. Thurman is tellingly tough. Lake Como is gorgeous.

Gus Van Sant's last picture, *Even Cowgirls Get the Blues* was very nearly incomprehensible. His latest, **To Die For** (Columbia), is so easily comprehensible that he presumably felt he had to gussy up the texture to make it interesting. This is the same impulse that seems to have motivated Spike Lee with *Clockers*, but with Lee's film, the story, though familiar, had a good deal more import.

Nicole Kidman plays a small-town young woman with dreams of glory as a TV newscaster and personality. (Buck Henry did the screenplay from a novel by Joyce Maynard.) She becomes the weather girl on the local station and marries a local Italian boy, Matt Dillon. Ambition soon makes her dissatisfied. ("What's the use of doing something worthwhile if nobody's watching?" becomes the mantra of her TV ambition.) She schemes to shed her loyal husband. She becomes acquainted with high-school kids by making a documentary about them, and she seduces three of them—one of them literally—into freeing her of her marital burden. It's all sort of like James M. Cain in diapers.

To help strengthen this trite story, Van Sant, with Henry's help, fragments it, then reassembles it in eye-catching ways. We begin with Kidman telling us what happened. (At the last we see that she has been videotaping herself.) Throughout the story, of which she is the protagonist, she returns for choric comment. Time is juggled. Visual effects are sprayed on. In the very last shot, for instance, the screen is fragmented like a honeycomb into repetitions of the image. This is to remind us of the TV mantra above.

To Van Sant's credit, let's note that he has evoked more lightness and variety from Kidman, more scrimshaw gesture and inflection than I thought she could muster. Two of the high schoolers are outstanding. Joaquin Phoenix, River's brother, reveals deep whirlpools of feeling. Alison Folland, as a girl with a crush on Kidman, is utterly convincing.

The plot has wide holes in it. For instance, why does a woman who is hatching a criminal plot sit for a picture with the person whom she wants to take the rap for it? But there is one subtle moment. Kidman attends a TV convention for networking purposes. She is at a table with George Segal (unbilled) and others as he tells her a salacious story with the patent purpose of seducing her. At the table, watching him operate, is another woman—a Famous Star, I think, also unbilled—who is enjoying Segal's maneuver. That woman's expression is the best thing in the picture.

If the film was supposed to be as ironic, even cynical, as Cain, it flounders. And if it wasn't supposed to do that, then what was *To Die For* for? And, to speak of Italians again, Italian viewers

FILMS WORTH SEEING

Clockers. *Drugs and crime in Brooklyn. Familiar enough material but made to sizzle here through Spike Lee's pyrotechnical imagination. Some good young black actors, plus Harvey Keitel's solid detective. (Reviewed 10/2/95)* **Living in Oblivion.** *"Backstage" at the making of a low-budget independent feature. Full of rueful laughs. (8/21&28/95)* **The Net.** *Sandra Bullock's star continues to rise. Here, as a computer-program analyst, she surfboards through a stormy sea of various crimes. A serviceable thriller. (8/21&28/95)* **To Wong Foo, Thanks for Everything! Julie Newmar.** *About the cross-continent drive of three drag queens. One of the worst scripts I can remember, but Patrick Swayze, Wesley Snipes and John Leguizamo scintillate. (10/9/95)*—**SK**

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may not be overjoyed with the way the film ends.

Showgirls (United Artists) is a backstage story with many bare breasts, some pubic hair, some comments on menstruation and some simulated sex. Some of the latter is even meant to be simulated—lap dancing.

The story is by Joe Eszterhas, the hottest of Hollywood hotshot writers, and it couldn't matter less. It's like the libretto of a third-rate nineteenth-century opera: an excuse for arias, only in this case the arias are flesh displays and terrific dancing. A footloose young woman, played by Elizabeth Berkley, hitchhikes to Las Vegas, is quickly robbed and left penniless, and is just as quickly befriended by a young black woman who takes her in. That woman is a costume assistant at a lavish club and introduces Berkley. The latter soon gets a job at a strip club, then through talent and brass, moves to the top-line club where her friend works. Berkley coolly maneuvers her way into the leading role in the club's extravaganza, which brings about (carpentered) complications. The ending is incredible, thus fits the film.

All the gaminess, including some lesbian teasings, seems to have been designed with a slide rule and computer by the director, Paul Verhoeven, a glandular specialist, at so many breasts per minute. What matters much more than the story or the Spicy Stuff is the dancing, the show-biz dancing. It's electric. Exciting. And there's lots of it. It was choreographed by Marguerite Pomerhn-Derricks, who has done ballet and jazz dancing and music videos. She makes all the dancers look so sensational that we wonder how Berkley was picked as best among them.

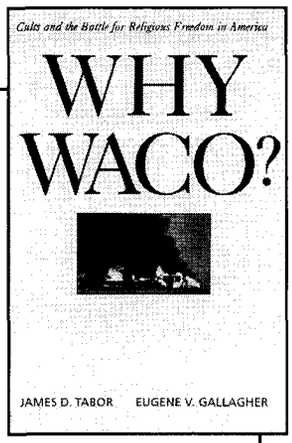
But Berkley is good. Besides her dancing sizzle, she does what she can with the mechanically viperous character she was given to play. Sarah Bernhardt couldn't have done much more with this robotic part, and couldn't have done the dancing. Worth notice, too, are Gina Ravera as her loyal black friend and Gina Gershon, an Ava Gardner look-alike, as the star whom Berkley replaces. They and the whole film bring us the news that: *(a)* under the glitz, Las Vegas is a tacky, tricky place; and *(b)* Las Vegas is a microcosm of American values at their shabbiest. If you don't think you can survive the shock of these insights, be warned. •

Jed Perl on Art

Born Under Saturn

The work that Bill Jensen has been doing in the past several years is as exciting as any painting that has ever been done in America. This 49-year-old artist is a master of inchoate, muffled-yet-fierce emotions, and no other artist alive has given us so many haunting impressions of the lowering, saturnine side of the artist's spirit. By contemporary standards Jensen's abstract canvases are small, generally two or three feet high, and this focuses us on the autographic force of the surface, which he builds up and rubs down and then builds up again with a concentrated lyricism that's so intense that it can be a little scary. Jensen has an alchemist's gift for turning piled-high brushstrokes and flotsam-like bits of pigment into the substance of a mythical natural world. It's an ugly-beautiful universe, where the vistas are eerie, the color is febrile and every landmark has a scintillating allegorical power.

Perhaps it's easiest to explain what Jensen does in these paintings by explaining what he does not do. He never builds a painting architectonically, and he never employs an end-to-end structure that takes its essential logic from the rectangular shape of the canvas. That's the French way—composition as a discipline that leads to a revelation—and it has nothing to do with Jensen's step-by-step, questing approach. While there are many Jensen paintings that contain a singular, looming image, he arrives at that all-in-one impact indirectly, incrementally. The poetry of Jensen's work is a matter of hints and flashes, of meanderings, unfoldings, unfurlings. There's a marvelous slowness to this work; it's Jensen's contemplative pace. One gets the feeling that he's begun each painting by focusing on some tiny element—the color of a brushstroke, the weight of a line, the thrust of a curve—and that for him the process of making a painting is the process of watching that first mark or gesture grow. In Jensen's work, growth is gradual, uneven, surprising, like bits of moss and lichen appearing on decaying



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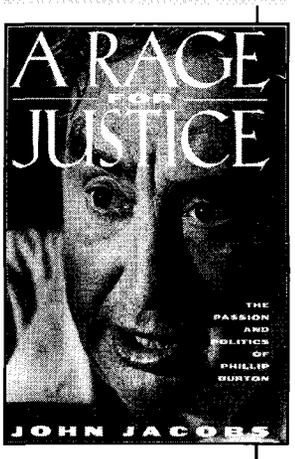

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branches and then spreading unpredictably, creating romantically irregular patterns.

There are six paintings in the Bill Jensen show that is at the Mary Boone Gallery in New York, and in order even to begin to look at them a gallerygoer has to tune into the artist's quietest, slowest, doing-almost-nothing mood. Two paintings, *Colossus* and *Pagan*, are very impressive. Both are vertical, a bit over three feet high, with a horizon line dividing the surface into nearly equal parts and summoning up, with almost diagrammatic abruptness, a view of sky above and earth or ocean below. *Colossus*, with cold blue brushstrokes spread out before the orange-yellow haze of the sun, is the primordial, Homeric sea. In *Pagan*, clouds of that same cool blue scutter across a greenish sky, a sky that's as uninviting as the rough, red-and-black terrain below.

These symbolic landscapes contain no trace of human presence; no path cuts through the gloom of *Pagan*, no boat could navigate the dangerous waters of *Colossus*. In the lower portion of the paintings, Jensen curves his elements to give just a suggestion of perspectival depth, but he's not invoking a particular place so much as summoning a harshly sublime mood. He's an ultra-sophisticated artist creating barbaric scrawls. And the paint-handling, with its complete lack of charm, underlines the peremptory spirit of these works. When I look at the paintings close up, I feel the chill of the palette knife rather than the softness of the brush. The roughed-up paint has some of the quality of Eastern calligraphy, of those complicated, iconic gestures that seem to emerge almost involuntarily out of an artist's reserves of calm. These landscapes, which feel both worn-out and untouched, are about mapping unmappable experiences, about being in a place that has no beginning and no end.

In the Boone show there's a third painting, called *Winter Light*, that does a remarkable job of evoking frozen desolation by means of a few brown marks set on a beautifully distressed surface. But after *Colossus*, *Pagan* and *Winter Light*, the quality of the work drops precipitously; the three other paintings are so understated that in each case I can only conclude that Jensen has left some essential part of the story inside his head. As I moved around the gallery, every other painting drew a blank. And since Jensen's dominant theme here is the fascination of near-emptiness, the outright emptiness of one half of the selections can't but undercut even his subtlest efforts.

The show is sunk by all this weak work. It's an out-of-focus exhibition, one that gives no sense of the variety of Jensen's recent painting, and I can't see how people leaving Boone will understand what kind of an artist Jensen really is. This is a very disturbing event. In the 1940s, Clement Greenberg complained in print that the best American painting was to be seen in the artists' studios rather than in the galleries. This fall Bill Jensen confounds us with the case of a remarkable artist who is showing at what is generally regarded as one of the most prestigious galleries around, but has left the majority of his strongest work a few miles away, in his studio in Brooklyn.

I realize that in comparing what is being presented at Mary Boone with the much larger group of paintings that I saw in Jensen's studio some six months ago, I'm making a judgment that is based on insider information. I'm loath to take advantage of such information, but the mismatch between what Jensen has been doing in his studio and what's being shown at Boone does such a disservice to the gallerygoer that a critic cannot but offer a behind-the-scenes view. This is only Jensen's second show at Boone, and the gap between his authenticity and her stylishness is wider than it was two years ago, when he first exhibited on West Broadway. There is no excuse for his not showing at least a half-dozen more paintings, including some of his recent underwater universes and fiery nightscapes. There's certainly enough room at Boone to demonstrate that Jensen is now able to present complicated emblematic subject matter with intuitive ease, but in this gallery even the strongest paintings look underpowered.

At the beginning of the '80s Mary Boone pioneered, almost singlehandedly, an overbearingly austere, Zen-Fascist style in gallery design, and by now it dominates the upscale scene. Boone's space at 417 West Broadway gave the slob-job work of Julian Schnabel and David Salle the VIP send-off that it desperately needed, but this gallery flattens out paintings that are discreetly emotional. It turns the Jensens into postage stamps. The real star is Boone's perfectly smooth, nearly empty gallery walls. It's a hell of a spackle-and-paint job, but it doesn't make for an artist-friendly environment.

At the very least Boone could have let gallerygoers in on what Jensen is up to by presenting, in one of the other rooms in her capacious building, the suite of intaglio prints that he completed in the spring of 1994 for an artist's book titled *Postcards from Trakl*. This collaboration with the poet John Yau is an homage to the Austrian poet Georg Trakl, who died in 1914 at the age of 27. In these prints, which are a mixture of aquatint and etching and just about everything else that can be done on a copper plate, Jensen is doing what we don't see him doing at Boone: alternating skyscapes and landscapes, fading-away images and rushing-forward images, getting into the details of an imaginary world. So why is the public being denied access to this work? Has somebody calculated that Jensen's fecundity will not go over with the Soho audience? To the extent that the Boone show represents Jensen as a visionary wandering in the wilderness, it's not a completely inaccurate view of the artist. But Jensen is a lot of other things. He's an artist who knows something about complexity and richness and paradox, and in an art scene that's desperate for variety and expansiveness, it's maddening to think that people aren't seeing what Jensen can do.

Like so much that's urgent in contemporary art, Jensen's work draws some of its force from the artist's essentially solitary position, from his very lack of significant relationship to anything that anybody else is doing. True, Jensen's small formats, biomorphic forms and impastoed surfaces have been widely imitated. They have by now generated a whole new kind of art-school product. The allegorical power of his work was an element in the '80s art experience, but even so Jensen's paintings never lost their somber detachment. At Boone, Jensen's solitude is turned into a commercial cliché, and it's easy to forget that he's just about the only artist who's given Neoexpressionism—which was the '80s way of trying to deal with the emotions of the '60s—some internal coherence. While most of the Neoexpressionists have treated generational feelings with trivializing irony, as Zeitgeist bulletins, Jensen has *visualized* the post-'60s feverishness.

Jensen's first breakthrough came late in the '70s, when he uncovered new life in a strain of mystical nature poetry that runs through American art from the storm-tossed seascapes of Albert Pinkham Ryder to the musical abstractions of Arthur Dove and the Maine forests of Marsden Hartley. These were not exactly unknown or underappreciated artists in the '70s, and the shock of Jensen's reach into an earlier American art was that he was able to learn from what was generally regarded as work of historical interest while avoiding the risks of antiquarianism. Jensen made these

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early American moderns feel contemporary; he made their experience his own. People saw Jensen's small formats, and the specificity with which he drew his enigmatic visions, as signifying a break with the overbearing scale and the homogeneous look of postwar American art. That led to the conclusion that Jensen was anti-Abstract Expressionist. In retrospect, however, it seems that Jensen was only finding his own way back into Abstract Expressionism.

Jensen came to New York from Minnesota, where he'd studied with Peter Busa, an old friend of Pollock's, and when he first exhibited those paintings in which small redefined beautiful it was his way of rejecting not Abstract Expressionism but a calcified view of the movement. Jensen wanted to get away from the chilled-out imagery of the later '50s and '60s, back to the high-pitched, densely figured, gritty, even gothic temperament of Pollock and Gorky and de Kooning in the '40s. His inward-turning scale, which is as much of an extreme statement as the Abstract Expressionists' wall-sized canvases, was a personal way of refocusing attention on the surface. And once Jensen had gotten down to basics, he knew that he could go anywhere, that he could question all the underlying New York School assumptions. In the mid-'80s he experimented with a sort of surrealist landscape that was so literal that it risked academicism. He's learned much from the streamlined forms of Arp and other purists; and in recent years he's looked farther afield, at the mountains in Trecento painting, at Goya and Michelangelo and Chinese scrolls.

Whether Jensen is reaching for a dense, cloisonné effect or something glancing and open-ended, he takes the same from-the-ground-up approach to form. Everything begins with the drawing, whether it's being done with pencil, ink or oil paint. When Jensen is drawing he's cultivating his garden, watching things grow. In recent years he has developed a way of working in black and white with brush and ink that's his alone; in the spring of 1994 there was a remarkable show centered on these drawings at the Washburn Gallery (where Jensen began exhibiting in 1980 and continues to show his graphic work). Jensen lays strokes down on thick paper, blots and sponges them while they're still damp and then works back into the surface. He's literally watering the paper, so that it becomes the soil from which the images emerge. He pushes into that dense, loamy surface (he uses gorgeous paper) over and over again, so that the result is an enveloping, dark-pewter mysteriousness. This is parallel to what he does with pigments and oils in the paintings. While the highly worked paint surface has become a mannerism in many of his imitators, with Jensen it's so closely tied to the discovery of forms that even his most exquisitely rubbed-down effects have an invigorating straightforwardness.

In his printmaking, Jensen is doing just about everything that's possible on a copper plate; he seems to be working inside the metal, extracting its secrets. For the past six years, some of the motifs that dominate his paintings have also been cropping up in the plates that he's been preparing for *Postcards from Trakl*, and the finished book, which presents the Jensen universe between hard covers, bears comparison to some of the finest illustration that was done by French artists in the first half of the century. True, John Yau's poems, despite some striking lines, are mostly Surrealist boilerplate, but many remarkable artists' books have had unremarkable texts, and in any case Jensen's real subject isn't Yau's poetry but Trakl's. This Austrian writer is generally seen as a bridge between fin-de-siècle dreaminess and Expressionist simplification, and in many respects Bill Jensen is a kindred spirit. Jensen may have had Trakl's "nocturnal wing-beat of the soul" in mind when creating several birdlike forms out of lightly inscribed lines. In Trakl's poetry "Scarlet banners whirl through the mourning of the maple-tree," "The tree of grace blossoms golden out of the cool sap of the earth" and "All roads end in black decay." It's a late-autumn atmosphere that one knows from Jensen's paintings, and in *Postcards from Trakl* this American contemporary is in a German Romantic state of mind, weaving themes of earth and air, heaviness and lightness, growth and decay into a shadowy, interior drama.

Postcards from Trakl opens with a composition of looming forms framing a barren land. There are hovering heraldic devices and uprooted tubular shapes that are like root systems refracted through a Baroque imagination. Jensen even manages to bring comic grace notes to the saturnine spirit of *Postcards from Trakl*; he sees the humorous side of his weird visionary landscapes. *Postcards from Trakl* is something very rare in contemporary American art, a collaboration between a painter who glories in the demands of intaglio printmaking and a master printer—Bill Goldston of Universal Limited Art Edition in West Islip, New York—who probably spends much of his time holding the hands of big-name artists who just want

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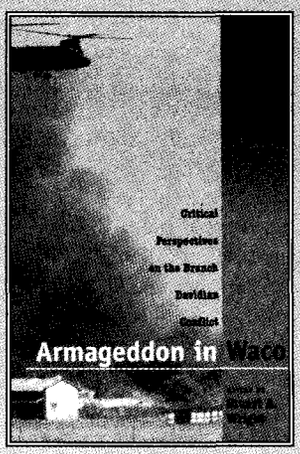

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Atmosphere is a central protagonist in much of Jensen's work, which is why he has such an intuitive feeling for the velvety chiaroscuro of intaglio printmaking. Many of his strongest drawings, prints and paintings leave us in a state of pleasurable suspension, because we can't exactly say what we're seeing, even though we know precisely how it's making us feel. In the paintings at Boone this fall, Jensen takes nonspecificity as far as it will go; even the clearest paintings give us little to touch down on, save for those casually drawn horizon lines that separate earth from air. Obviously Jensen is testing the limits of his anticlassical, antiarchitectonic method, and that's perfectly legitimate. The problem is that some of these paintings that are meant to be emotionally elusive are also formally unresolved, so that Jensen's homegrown, unto-myself strength begins to look like homegrown obtuseness.

I think that Jensen meant to offer us a key to this evanescent world of his when he gave a number of the Boone paintings homage-to-great-moviemaker titles. One of the weakest canvases is named after Andrei Tarkovsky's film *Stalker*. There are three that refer to Bergman: the delicate *Winter Light*, the inconclusive *Hour of the Wolf* and the vacuous *Madame de Sade* (Bergman directed a production of the Mishima play that was presented at the Brooklyn Academy of Music last season). I don't want to bear down on the relationship between particular titles and particular paintings—it would only underline the problems with these works—but I take Jensen absolutely seriously when he encourages us to believe that there's a connection between movie atmosphere and painting atmosphere. That connection is at the heart of Jensen's work, especially some of the work that we're not seeing at Boone. I think that Jensen is the first artist of his generation who's done what so many have talked about doing: he's brought something of the movie experience into painting.

Jensen understands that the essence of the movie image isn't its composition but its flow, its changeableness, its kinetic feel. Whereas David Salle will focus on the campy dissociated qualities of the film still, Jensen wants to use his antiarchitectonic kind of painting to evoke the flooding-over-us high of movie emotion. People who know Tarkovsky's movies immediately see why Jensen is drawn to them; Jensen's looming enigmas and watery and misty effects parallel Tarkovsky's allegorical universe. What the critic Paul Coates says of Tarkovsky—that he creates a world that "exists simultaneously in the monochrome of depression and the color of joy"—goes for Jensen, too. With Tarkovsky, it's the wildness and the strangeness that Jensen is responding to. In the case of Bergman the affinities are subtler, more emotionally complex, so much so that it's tempting to believe that Jensen has closer artistic ties to this Swedish director than to any painter living or dead.

Jensen shares Bergman's taste for looming, spiky gothic imagery. And Jensen, who comes from a Minnesotan-Scandinavian background, has a feeling for the beauty of desolation that's in a Northern European tradition that Bergman has defined for American audiences practically since Jensen was born. If such early Jensens as *Crown of Thorns* and *The Tempest* suggest the dark medievalism of Bergman's *The Seventh Seal*, some of the more recent Sienese landscapes and ebulliently striped snaky shapes suggest the exuberant Bergman of *The Magic Flute*. In Bergman, sensuousness can flash up in the midst of severity, and an allegory can leap into startling life. I think Jensen is bringing these same strong, contradictory forces into his painting. He, too, can give ponderous emotions an immediate, flowing grace.

The Northern artist is the sensualist who is forever at war with his own sensuality, and more and more Bill Jensen has been reaching toward a daringly complete portrait of a divided self. Jensen's dominant note remains one of chilly winter light, but his feeling for that kind of beauty leads him to explore other kinds of beauty, to yearn for and sometimes evoke Southern gentleness, even Southern heat. It's the clashes of gravity and exuberance that more than anything else make Jensen an artist whom we want to watch. By looking into his own emotions, he's gotten at a generational truth. His sliding-one-into-the-other emotions are our emotions. With his darkly burning conflicts, his full-out lyricism, his feeling for a beauty that's sometimes indistinguishable from the grotesque, Jensen keeps us baffled and unnerved. He knows more about us than we may care to know about ourselves. Melancholy? Divided? Marooned? This is not how the generation that started out in the '60s ever expected that it was going to feel. •

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My Death as a Man

BY JAMES WOOD

Sabbath's Theater by Philip Roth

(Houghton Mifflin, 451 pp., $24.95)

Fuck the laudable ideologies.
— Mickey Sabbath

I.

In recent novels Philip Roth had begun to cage his dangers, routinize his obsessions. His characters still shouted at each other, but too argumentatively to offer any argument to the reader; or too symmetrically not to cancel themselves out. Jewishness, women, Israel, the burden of fiction-making, the antagonistic self: his characters had become parlor soldiers, and the novel simply the piano around which they gathered to sing their little rages. His men had their campaigns of sex, but the sex was no longer subversive or important, as it had been in *Portnoy's Complaint*, and had come to seem merely inevitable. It had become tedious to follow Roth's fictional games, ghosts and handprints.

But *Sabbath's Theater*, Roth's extraordinary new novel, shares little with this recent history. Its male protagonist is not Philip Roth in disguise, nor is he (apart from his Jewishness and his New Jersey origins) proximate enough to his author to excite suspicion. There is more sex, more male outrage, more filth in this book than in any of Roth's earlier work, but the sex here is important, even desperate, and not merely victorious, as it had tended to be; and the outrages are not only opportunistic. There is passion in this book, recognizably that of a 62-year-old writer shouldering his mortality.

In *Sabbath's Theater*, Roth's menace is uncuffed and at large. It gathers in the character of Morris "Mickey" Sabbath, who is a moving army of disgusts. Sabbath is a great hater, a walking insult. He is now in his mid-60s, bearded, heavy-bellied and deep into a second, sexless marriage to an alcoholic. For pleasure, he has his glorious relationship with his lover Drenka, a Croatian-American with a tendency toward malapropism. He has been unemployed for years, but survives on a flowing stipend of hate. "Despite all my troubles, I continue to know what matters in life: profound hatred," he tells his wife. Sabbath defaces life; he tears his days from their peaceable volumes and scrawls his filthy footnotes over every page.

Sabbath is a former actor, director and puppet artist who behaves like a genius: "He'd paid the full price for art, only he hadn't made any." He is a dispensary of free enmities and he sprinkles his pollutants across the novel. He rages against the Jews, the Catholics ("Jesus and Mary and Joseph and all the gang there in the manger ... the whole fucking Catholic schmeer that we all need like a fucking hole in the head") and the Japanese, who shot down his beloved elder brother, Morty, in World War II. He delights in his holiday from rationality. When his wife asks him why he hates the Japanese so much, he replies: "Because of what they did to Alec Guinness in *The Bridge on the River Kwai*. Putting him in that fucking little box. I hate the bastards.... When I hear the word Japan, I reach for my thermonuclear device." He has stopped following the news: "The news told him nothing. The news was for people to talk about, and Sabbath, indifferent to the untransgressive run of normalized pursuits, did not wish to talk to people. He did not even want to know who the president was of the United States. He'd rather fuck Drenka, he'd rather fuck *anyone*, than watch Tom Brokaw." He even hates the Muppets.

This novel alludes often to *King Lear*. As a young man, Sabbath played Lear in his own production. When Drenka dies of cancer, Sabbath flees his wife and drives to New York, where he has a Lear-like breakdown, and wanders the streets recalling lines from the play. As Lear, so Sabbath crumbles from a misanthrope into a nihilist, and his hatred becomes comprehensive where before it had been indiscriminate. Now he hates everyone, especially himself. "All I know how to do is to antagonize," he moans. He wants to die (and at this point in the novel we, too, want him to die) and reads books about death and funerary practices in the world religions. Like Lear, he must first be exposed on his metaphysical heath.

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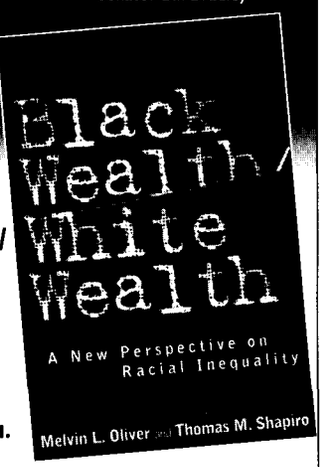

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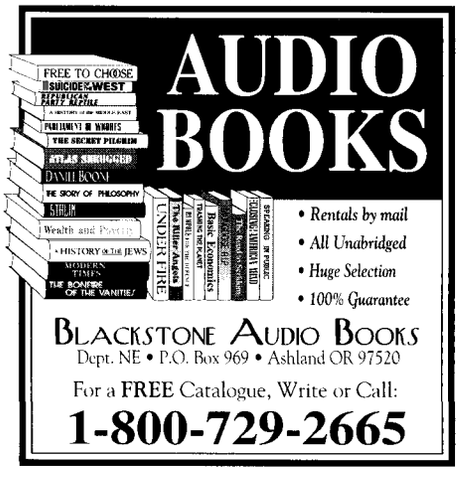

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And indeed, Sabbath's life has been sourly fugitive; he has run from various sexual scandals to the moral quarantine of rural Massachusetts. In New York in the 1950s, the young Sabbath—"a squat man, a sturdy physical plant, obviously very sexed-up and lawless, who didn't give a damn what anybody thought"—ran a street theater opposite the gates of Columbia University, in which he used his fingers as puppets. But he could not keep those fingers off the pretty girls in his audience, and an indecency charge was filed against him. When his unhappy first wife, Nikki, disappeared in peculiar circumstances, Sabbath quit New York with his new lover, and later wife, Roseanna. In Massachusetts, however, he lurches into disgrace again, at the local college where he teaches theater. A student whom he has seduced tapes one of their bouts of phone sex. Sabbath is sacked, and the tape becomes a standard work for various women's pressure groups. (Roth obligingly provides a transcript of the tape.)

Sex—sex with the enterprising and inexhaustible Drenka, but anyone will do, really—both heals and salts his life-wounds. Sex gives Sabbath a reason to live, confronts the great refusing force in him. But sex is also the very emblem of this refusal, for it so violently mocks everything. Sabbath, after all, wants to fuck the world, literally and figuratively. Sex is the badge of his militancy as a man, and each new offense merely reveals another unoffended area. "Yes, yes, yes, he felt uncontrollable tenderness for his own shit-filled life. And a laughable hunger for more. More defeat! More disappointment! ... God willing, more cunt! More disastrous entanglement with everything."

Sex seen in this way is as interminable as life, and as entrapping. Feeling suicidal in New York, Sabbath rues that "Something always came along to make you keep living, goddamnit!" This something is sex. Sabbath cannot escape sex. He lives within it as great painters are said to live within one color; everything he does is sex-tinged. Even when he is not thinking about sex, he is thinking about sex. "Never, never would he voluntarily depart this stupendous madness over fucking." Roth relishes this madness, and it *is* a madness, something that, like the medieval carnival, inverts the world. In the ancient nihilistic way, Sabbath trades in opposites: he wants to die rather than to live, for living is a sickness, not a health. Similarly, sex is a sacred slayer, a liturgy of errancy: "The core of seduction is persistence. Persistence, the Jesuit ideal.... You must devote yourself to fucking the way a monk devotes himself to God. Most men have to fit fucking in around the edges of what they define as more pressing concerns.... But Sabbath had simplified his life and fit the other concerns in around fucking.... The Monk of fucking."

Sex here exists as the most tangible index of the rage for disorder. And what disorder, what mischief! When Drenka comes to Sabbath, asking him to look over a speech her Croatian husband has written for the local Rotarians, Sabbath sabotages it. Realizing its deep boredom—it is about rural innkeeping—Sabbath advises that it should be three times as long; and he tells Drenka that her husband is misusing English idiom. The phrase in English, he explains, is not "nuts and bolts," it is "nuts and bulbs." He advises appropriate correction, which is duly followed. The speech is a disaster. (Sabbath enjoys Drenka's own verbal slips: "when the shithouse hit the fan"; "the boy who cried 'Woof!'"; "alive and cooking"; "let him eat his own medicine"; "crime doesn't pay off"; "the whole kitten and kaboozle.")

When Drenka dies, Sabbath takes to masturbating on her grave at night (he believes in what he calls "the satanic side of sex"). "Even dead, Drenka gave him a hard-on; alive *or* dead, Drenka made him twenty again." After her death, when he leaves his wife and drives to New York, he is taken in by his friendly and upright colleague, Norman Cowan. He thanks Norman by trying to sleep with his wife, Michelle. Norman catches him masturbating over a graduation photograph of their daughter Deborah (an excruciating scene). He is thrown out of the Cowan house when Michelle finds a pair of Deborah's panties in his coat pocket. "You have the body of an old man," Michelle tells him, "the life of an old man, the past of an old man, and the instinctive force of a two year old."

Sabbath's Theater is wild, but its nihilism is disciplined and generously subsidized by philosophical tradition—we might expect as much from a novel whose hero has been working on a puppet adaptation of Nietzsche's *Beyond Good and Evil*, and who wants to kill himself because he has seen that life is "stupid.... Anyone with any brains understands that he is destined to lead a stupid life *because there is no other kind*." We recognize the ring of that hammer, hear Nietzsche in it, and those wild uprooters Louis-Ferdinand Céline and Thomas Bernhard. It is the sound of a voice stinging itself in trances of negation, the sound of logical vandalism. Sabbath is a creature of this tradition, and Roth uses it with considerable philosophical precision.

Unlike most of his American contemporaries, Roth has been influenced by European nihilism. He has called Céline "my Proust." Though his writing here has much of Céline's flail, Roth deploys nihilism with more metaphysical acuteness than Céline. Roth is attentive, though not didactically or programmatically, to certain motifs of the nihilistic tradition. Chiefly, Sabbath has what Nietzsche recommended his "free spirits" should possess: "exaggerated honesty." He sees through his own life, sees through all life, sees the useless dangle of it, the frayed threads on the back of the plausible brocade. Driving weepily to New York, fleeing his marriage but hardly himself, he gets lost, and universalizes blackly. Perhaps this is what life is like: "a coffin that you endlessly steer through the placeless darkness, recounting and recounting the uncontrollable events that induced you to become someone unforeseen." That great misanthrope Jonathan Swift wrote his own obituary, in the form of a poem. Likewise, Sabbath sketches a merciless appraisal of his own wasted life as *The New York Times* might do it. Wittily—this is a funny, funny book—he imagines sub-headings: "Pig or Perfectionist?","Did Nothing for Israel."

Nihilism, which replaces life with death, inverts everything. Sabbath, the Monk of Fornication, turns morality's homburg back to front. "I'm not big on oughts," he cries as he attempts to lure Norman Cowan's wife into her own guest bedroom, thereby dispatching the Categorical Imperative. When Michelle Cowan murmurs about fidelity, Sabbath turns fidelity into a sin. "A world without adultery is unthinkable. The brutal inhumanity of those against it. Don't you agree? The sheer fucking depravity of their views. The *madness*." Yet even if life is a sickness, knowledge will not bring health, merely a deeper sense of sickness. At his bleakest moments of self-searing, Sabbath knows that he knows nothing: "no lucidity to be derived from any of this. Rather, there was a distinctly assertive quickening of the great stupidity."

When this poor trapped beast goes to New York for the funeral of a friend who has killed himself, his sickness becomes acute. Roth's allusions to *Lear* become explicit. Sabbath is homeless and friendless, accompanied, so he imagines, by the ghost of his mother, to whom he talks about his life. It is here that the novel begins to toll its backward peal, becomes the casing to the heavy clapper of memory, which moves ceaselessly between Sabbath's anarchic present and his happy past. Homeless, he is Lear thrown out of his daughters' palaces, and in New York he recites lines from the play: "I am

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a very fond and foolish old man.... You do me wrong to take me out o' the grave." He rants to the ghost of his mother, and fingers the past: the small town on the Jersey shore where he grew up, his beloved elder brother shot down by the Japanese, his mother who never recovered, the official telegram from the Army, the streets full of soldiers and hawkers, the warm nervous conspiracy of family life to which Roth returns so often, so captively, and so beautifully, in his fiction. In New York, at Norman Cowan's home, Sabbath stands at his window and thinks of hurling himself out of it. He cannot do it. He seeks the grave but, as much, he seeks the graves of his family, and goes on wistful mental travels.

The novel, at this point, is 150 pages old. From this moment, the prose races on a thousand feet and does not stop until the last word. The writing, like Henry Roth's in *Call It Sleep*, speeds along a line of grief, lapsing in and out of stream-of-consciousness. These next 300 pages are an astonishment and a scourge, and one of the strangest achievements of fictional prose that I have ever read. Sabbath cannot kill himself, and wants to; hates life, but loves it well enough to think another minute of consciousness preferable to nullity. On the streets, in borrowed clothes (but clutching in his pocket young Deborah's panties), he mingles with the bums and beggars:

> So passeth Sabbath ... a caricature of himself and entirely himself, embracing the truth and blind to the truth, self-haunted while barely what you would call a self, ex-son, ex-brother, ex-husband, ex-puppet artist without any idea what he now was or what he was seeking, whether it was to slide headlong into the stairwells with the substrata of bums or to succumb like a man to the desire-not-to-be-alive-any-longer or to affront and affront and affront till there was no one on earth unaffronted.

In this frailty of self, Sabbath tearfully elegizes his dead family, and resurrects them; he longs for death, but would as happily be the victor over it. Beautifully, his inversions veer from nihilism towards the utopian:

> What if they were *all* alive ... Morty. Mom. Dad. Drenka. Abolishing death—a thrilling thought, for all that he wasn't the first person, on or off a subway, to have it, have it desperately, to renounce reason and have it the way he did when he was fifteen years old and they *had* to have Morty back. Turning life back like a clock in the fall. Just taking it down off the wall and winding it back and winding it back until your dead all appear like standard time.

Standing in Deborah's bedroom, searching for inflammatory snapshots of Norman Cowan's daughter, he comes upon her college notes on Yeats's poem "Meru," which Deborah has copied out in full. Sabbath is moved by Yeats's depiction of a world in which man is driven to destroy his own greatnesses:

> Ravening, raging, and uprooting that he may come
> Into the desolation of reality:
> Egypt and Greece, good-bye, and good-bye, Rome!

Under it, Deborah has quoted her professor: "Yeats was at the verge beyond which all art is vain." Something like this is true of the next 300 pages of this novel, which burst through stained-glass to a brutal transparency of report; whose racing sentences seem to renounce slowing and local ardors the better to catch the wing of truth.

II.

Some of Roth's previous novels have been forged "confessions" so as to muss our idea of the truth. But *Sabbath's Theater* draws its great power from our feeling that truth is not confessed, or even "confessed," but revealed. There is

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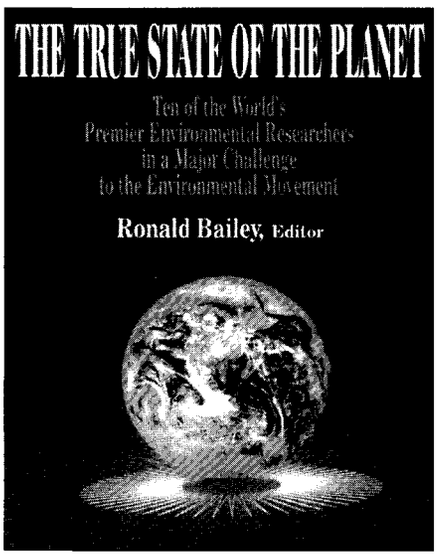
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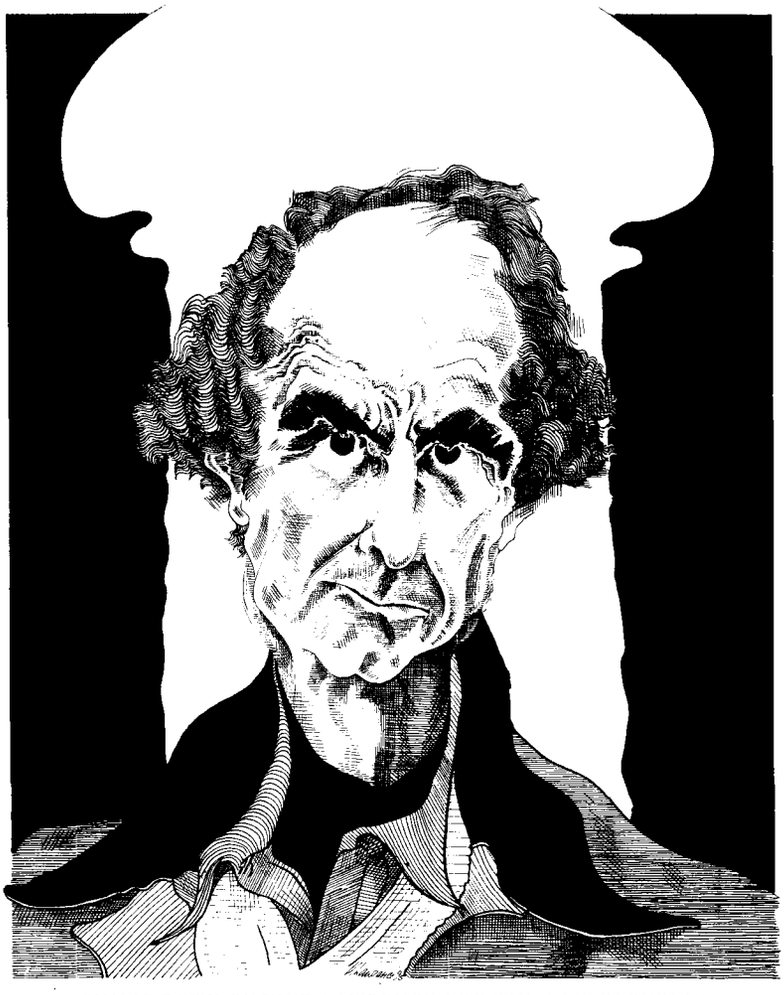
almost nothing of Philip Roth in Mickey Sabbath; and there is everything. Sabbath's anguish, his life-reckoning and death-reckoning, his wail of finitude, have the pressure of the writer's deep engagement. Sabbath's seriousness moves us. Sabbath is pathetic, like most of us, because he knows himself well enough for judgment but not well enough for correction: "A really trivial, really shitty life." He poisons everything he touches, but this begins with himself: "Everything runs away, beginning with who you are, and at some indefinable point you come to half understand that the ruthless antagonist is yourself."

Roth wants to shock, and like Céline he delights to trample on fresh meadows. But those who simply register shock at Sabbath's foulness end up simply describing him—which is a tribute to his tremendous reality. *The New York Times*'s critic complains that Roth describes "in lewd detail, all of Sabbath's sexual high-jinks," and that these read like "the depressing gropings of a dirty old man." Indeed they do; and Sabbath admits as much. When he arrives at Norman Cowan's house, he realizes that "he unnerved Norman no less than if he had been a tramp whom Norman had foolishly invited to spend the night. That he, Sabbath, could inspire such feelings of course entertained him. But it was hideous as well." Everything flows from Sabbath's quiddity, or does not.



PHILIP ROTH BY VINT LAWRENCE FOR THE NEW REPUBLIC

Misogyny always flickers in the nihilist vision, because woman—see Nietzsche—is seen as a timid obstacle to man's metaphysical lawlessness. Woman is convention, in this vision. In Roth's work, certainly, women do seem to exist to indulge or to obstruct the free play of the phallus. Some of Roth's earlier novels have an air of self-congratulation about them. *My Life as a Man* strikes one as misogynistic because even though the narrator passes himself off as flawed ("The broken shall succor the broken"), he lords his completion over difficult or inexperienced women. He teaches them lawlessness ("Then there is the painful matter of the elusive orgasm: no matter how she struggled to reach a climax, 'it' never happened"). Tarnopol's smugness, of course, may be Roth's very point; but Tarnopol, who narrates the book, controls too many of the novel's terms to seem plausibly unreliable. He controls how we read the book.

Sabbath fills his own novel, but he does not control it. And what does Sabbath have to teach a woman? He himself needs tuition. His relationship with Drenka, though interestingly kinky—troilism, voyeurism, lesbian guests—is bracingly balanced: Drenka more than matches him. Certainly Sabbath finds it difficult to look at women without, as it were, scanning their sexual skeletons first. But that is because sex is very important to him. The women with whom he engages—Drenka, Michelle Cowan, a woman at his wife's rehab unit whom he tries to pick up—are solidly realized. They are not just clouds of male desire.

While sex has seemed simply a challenge in some earlier Roth novels, a part of the Céline-influenced program of ceaseless shock, sex in *Sabbath's Theater* has at least a personal inflection, and a metaphysical dignity. Yes, even a kind of dignity, owing to the philosophical desperation that fills it. Sex is not a challenge here, it is an endless defeat. No self-congratulation hangs from it. Sabbath uses sex as part of his nihilistic war against decency and sobriety. Yet one should recall the place of sex in the nihilistic vision: it has a meanly absorptive function. Since the soul is dead, it is the body that registers the soul's wounds. And the body at sex—seen under the eye of mortality—is a poor, rutting, animalistic thing. Sabbath's invocation of sex's "satanic side" is, at least, double-edged. Satan does not comes into things where the stakes are low or unserious. *Sabbath's Theater* is a great tribute to the *via negativa.*

Of course, Roth has been fleeing from the sublime since *Portnoy's Complaint.* It startles to return to *Goodbye, Columbus,* his first book, and to savor the high-minded restraint, the tiny rounding of each fine phrase, the dab at traditional "pathos." This is some way from the loose, brawling extremities of the later Roth voice. Ever since Roth was attacked for being anti-Semitic and self-hating, he has enjoyed spitting at decency. When Hermione Lee asked him in 1984 if he wrote with a reader in mind, he replied: "I occasionally have an anti-Roth reader in mind. I think, 'How he is going to hate this!' That can be just the encouragement I need."

In *My Life as a Man,* the Roth-like writer Peter Tarnopol mocks the pallid Wasp gentilities of his 1950s literary education, the family out of which *Goodbye, Columbus* emerged. Tarnopol must decide between traditional sublimity and the anti-sublime. He fears that "maybe I am turning my art into a chamber-pot for hatred, as Flaubert says I shouldn't, into so much camouflage for self-vindication—so if the other thing is what literature is, then this ain't ... I'll try a character like Henry Miller, or someone out-and-out bilious like Céline for my hero instead of Gustave Flaubert—and won't be such an Olympian writer." Likewise, in *The Ghost Writer,* the Roth-like writer Nathan Zuckerman feels he must make a similar choice. Recalling

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Stephen Dedalus, he throws down a gauntlet to himself. He decides that sex will be his rebellion, his flaming addition to Jewish high-mindedness: "When I came upon Babel's description of the Jewish writer as a man with autumn in his heart and spectacles on his nose, I had been inspired to add 'and blood in his penis,' and had then recorded the words like a challenge."

There has, occasionally, been something puerile about this rebellion (though *The Ghost Writer* never errs). A slick of self-satsifaction sits on top of this rather deliberate grime, in particular a complacency at Jewish inappropriateness. Watch those Jews shred Jane Austen all over the Newark streets! ("The seven Christian critics in the seminar would hardly dare to speak when the three dark Jews ... got shouting and gesticulating at one another over *Sir Gawain and the Green Knight.*") At such moments, Roth's novels seem to be playing themselves, clattering out manifestos for their outrageousness, mimicking a self-argument—Céline or Flaubert, which shall I be?—which, one feels, has actually been foreclosed.

Sabbath's Theater certainly promotes its own idea of what art should be, as found in the young Sabbath's New York enterprise, the Indecent Theater, "where the atmosphere was insinuatingly anti-moral, vaguely menacing, and at the same time, rascally fun ... an unseemly, brilliantly disgusting talent that had yet to discover a suitably seemly means of 'disciplined' expression." We would be naïve not to hear a Rothian self-description in this. Clearly, neither Roth nor Sabbath will be much interested in seemliness. But since self-argument has been surrendered in this book, so has the need to propagandize and to convince. Mickey Sabbath is beyond argument.

In *My Life as a Man*, Peter Tarnopol's wife tells him, "You are not in the virtue racket." But Sabbath is not in the convincing racket; he is not in any racket; and neither, therefore, is the novel, for Sabbath *is* the novel; he fills it spreadingly, like a CinemaScope effigy on a television screen. Past quarreling with himself, his lovers, or the reader, he exists only to be confirmed by defeats. For where some of Roth's self-arguing characters—and novels—have been urgent but not quite serious, Sabbath is deadly serious. His nihilism is too bitter to need props, to need the anxious verbal netball of Roth's usual modes. Sabbath screams, singly and envelopingly.

Sabbath's grossness, his racist rants, will doubtless provoke the usual imprecations; but it should be clear that the novel's offense is not political, it is metaphysical. Sabbath's offenses are against life. They have not worked if they do not disgust. Sabbath is on a crusade: to set the world to wrongs. In the past Roth's outrages have been thrown out as a challenge, and have needed special pleading built in to their structures; but here the stakes are much higher. Roth is not simply delighting in his avoidance of correct thinking or "disciplined expression." He is blaspheming, with all the grandeur that blasphemy implies. *Sabbath's Theater* mounts an anti-theological theology.

Blasphemy is more profound than rudeness, because it ascribes value to what is blasphemed. Sabbath's negative engagement with the world is a kind of homage to its cruel power. His cruelties remind us of the world's. Unlike satire, which rests its case once its target has been speared, nihilistic blasphemy can never be completed, since it seeks to overturn life itself; it is not over until life itself has ended. Only death can remove Sabbathean outrages. Céline wrote in a letter, "I'm still a few hatreds short, and I'm sure they exist.... When the world changes its soul, I'll change my form." Likewise, Sabbath is unappeasable: "My failure is failing to have gone far *enough*! My failure is not having gone *further*!"

If this novel shocks, it is not because of what Mickey Sabbath does with women's underwear. What is shocking is to have life written off like a debt. Sabbath wants to spoil life for us, to make it seem not worth living, metaphysically superfluous. Vileness in art has usually been cautionary or cathartic: the absence of good in the work of art excites our desire for the good; or we lose our vileness in the work's exaggeration of it. But Roth wants to adjust our very idea of the good. Obviously, if we no longer know what the good is, our literature can hardly advise us of it (not least because the kind of morality inscribed in the idea of the cautionary tale is not worth having: *Lolita* would not be a great work of art if it merely told us that pedophilia is wrong). The exposing of this may well be sacred, even as it inverts the sacred. "What if the mass for the dead were read over the living?" asks Beckett in *Molloy*.

III.

Sabbath seeks not only his grave. He also seeks his family's graves; and so he leaves New York for New Jersey and his hometown by the sea. He wants to buy his own grave. So begins the novel's tearful final hundred pages, as the book leaves *Lear* for *Hamlet*. (The section is called "To Be Or Not To Be.") Like Hamlet, Sabbath strolls among the graves meeting the mortal constituents, the democrats of death. His parents are here, his brother also, but crammed into a ground so thickly planted that it is like a bed of nails. Roth offers a thrilling page filled only with gravestone names: "Our beloved mother Minnie. Our beloved husband and father Sidney. Beloved mother and grandmother Frieda. Beloved husband and father Jacob." So it goes on and on, the endurance of those who have not endured.

And again like Beckett, Roth cannot resist a cemetery joke. The gentile caretaker of the Jewish cemetery, Mr. Crawford, who has worked there long enough to talk himself about "shvartzes," is one. Crawford cannot find Sabbath the plot he wants, next to his family, but he finds him somewhere else, and consoles him by elevating what has been leveled: "Yeah, but you're across from a very fine family. The Weizmans." Sabbath buys the plot.

Then he drives into town to visit his old cousin, a man called Fish. Sabbath feels stirred, weepy, late. He finds Fish at home, sitting in his living room. Fish is 100 years old, "a mere mist of a man." Sabbath is struck by his endurance: "The incapacity to die. Sitting it out instead. This thought made Sabbath intensely excited: *the perverse senselessness of just remaining, of not going.*" Roth's sensitivities, his ironies, quiver in these scenes. For Fish cannot recall Sabbath, though Sabbath tells him that he and his brother Morty used to help him go round the streets selling vegetables. Sabbath has spent more and more of the novel in memory. He realizes that if he asks Fish questions, prods him gently, persists with him, he will get some kind of retrieval.

Persistence, he tells us, is the secret. The reader jolts: persistence is precisely how Sabbath has defined sexual seduction. And suddenly one realizes that Sabbath is not seducing Fish, but memory itself. The man is hitting on temporality. He is wooing the past; and since this is his past, wooing himself. At this gorgeous point in the book, a chandelier of gathered moments, all the novel's collected tensions and themes, hangs over this scene to light a strange and new path. It is exquisite. In a moment, Sabbath expels his nihilistic antibodies, and turns sex not into death but into the recovery of life.

This is Sabbath's finest inversion, the redemption of all his nihilism: that he might, as he dreamed, turn life back like turning back the clock at fall, and exchange not life for death, but death for life. The inversion of nihilism's inversions. Roth is supremely tactful here. He does not spell any of this out. It is simply

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implied in his climactic return of the idea of persistence. Certainly, old Fish lives a kind of living death, but it is, wonderfully, a continuous present, for Fish, befuddled, imagines that Sabbath's father is still alive, and somewhere in town. "He sent you over here? Or what?" he asks. "Yeah," Sabbath replies about his father. "He sent me over here." "Isn't that remarkable," sighs old Fish.

Sabbath steals a carton of his brother's army mementos from his cousin Fish, and, deeply moved, he wanders down to the seashore. He takes out his brother's memorial flag:

> There he unfurled it, a flag with forty-eight stars, wrapped himself in it, and in the mist there, wept and wept.... And all from only a single carton. Imagine, then, the history of the world. We are immoderate because grief is immoderate, all the hundreds and thousands of kinds of grief.

Roth's prose, moving on its thousand racing feet, is so mobile here, so absorptive. With what ease it leans back into the middle of the book and plucks out Yeats's apparently discarded poem, and then Fish's gently extravagant adjective, "remarkable." Sabbath sees that he cannot bring back the past, and that even the small change of his childhood has been spent: "The boardwalk was gone. Good-bye, boardwalk. The ocean had finally carried it away.... Remarkable. Yes, that's the word for it. It was all remarkable. Good-bye, remarkable. Egypt and Greece good-bye, and good-bye, Rome!"

Partially redeemed, partially purged, but as unhappy as ever, Sabbath goes on his hate-strewn way. He leaves New Jersey and returns to his wife. "And he couldn't do it. He could not fucking die. How could he leave? How could he go? Everything he hated was here." With characteristic relentlessness, and with compassion, this profound novel ends as it might well begin again, in the basement of the soul. •

Faux Populism

By Gordon S. Wood

Self-Rule: A Cultural History of American Democracy by Robert H. Wiebe

(University of Chicago Press, 321 pp., $25.95)

We Americans these days do a lot of hand-wringing over the state of our democracy. Scarcely a week goes by that some pundit or critic does not pinpoint one problem or another in our democracy and call for some sort of reform or renewal. The American people are ill-informed, cynical, directionless. They are atomized and unconnected, a mere collection of strangers, with little sense of community. They mistrust government and politicians and seem uninterested in political participation. Too many of them, more than in any other modern developed nation, don't even vote. They look for leaders but don't see any. Elites have lost touch with them and even betrayed them. Political parties have been stripped of much of their reason for being. The parties control neither the selection of their candidates nor the raising of money. Money appears to have become the be-all and end-all of our politics; it determines the candidates and wins the elections. And so it is not surprising that the people have become increasingly bewildered and apathetic, either longing for some nonpolitical savior or turning their backs on the entire political process. For many of these critics and commentators, the outlook seems bleak. Some of them even wonder whether American democracy has a future.

Robert Wiebe is well versed in all this contemporary criticism of our democracy. In his new book he cites more than sixty works by publicists, philosophers and social scientists written over the past twenty-five years dealing with one aspect or another of American democracy. According to Wiebe, these critics, ranging from Bruce Ackerman to Joseph F. Zimmerman, have a wide variety of concerns and remedies, agreeing, it seems, only on the fact that "democracy is a process of self-government that includes elections."

Publicists begin with a crisis in public affairs and tell us how things must be. Philosophers begin with a moral problem and tell us how things ought to be. Social scientists begin with politics and government and tell us how to make things work. These critics tend to focus on what Wiebe calls the "inputs" and the "outputs" of the democratic process. Inputs usually mean both the structures and procedures of self-government and the beliefs and commitments of the participating citizens. And outputs generally mean individual liberties, social justice or political effectiveness. With such a variety of critics and perspectives, it is understandable why we have so many different diagnoses and prescriptions for the presumed ills of our democracy.

Most of the dissatisfaction with democracy, Wiebe says, begins with the outcomes.

> Perhaps the individual's freedom is being frustrated, as the philosopher Robert Nozick and legal theorist Roberto Mangabeira Unger might agree; or social justice is being denied, as the consumer's champion Ralph Nader and the political commentator Kevin Phillips would argue; or the governmental system is producing paltry results, as the journalist E. J. Dionne Jr. and the political scientist James Monrone would claim.

To correct these flawed outcomes, the critics usually advocate changes in what goes into the process—perhaps revitalizing the political parties, changing the financing of political campaigns or re-educating the public about its civic responsibilities.

This preoccupation with the consequences of the democratic political process, says Wiebe, tends to make critics less and less interested in the process itself. Those who want individual freedom and social justice above all are often eager to curb popular electoral government and to rely on the appointed courts for their desired results. The American people, it seems, are really not up to what is expected of them. Some of the critics throw up their hands in despair and conclude that the United States has never been a genuine democracy.

Wiebe is a historian, and he has little patience with much of this criticism. He believes it lacks historical understanding and historical depth. Early nineteenth-century Americans invented democracy, he writes, and the knowledge of their experience can help temper our present sense of malaise. Although the nineteenth-century electorate was poorer and less formally educated than we are, it was far more assertive and self-confident, far more engaged in politics. With a fuller sense of what our democracy was like in the past, says Wiebe, we can peel away the encumbrances on our understanding of democracy and come to appreciate better the essentials that lie at its heart. "Instead

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of shunting aside the political process because it threatens our values, we rein in our values to make room for the political process."

American democracy, writes Wiebe, requires first of all voting and political participation. To make these meaningful, however, it also requires leaders who are responsive and a citizenry that is informed and capable of political association. But, says Wiebe, democracy is not identified with capitalism, the welfare state or any set of social outcomes. "It promises no one good health, adequate leisure, a rising standard of living, or an equalization of rewards." Nor does it offer any cure for cruelty or oppression; "it has no corner on compassionate impulses or social sensitivities." Although Wiebe admits that democracy has "some theoretical affinity for doctrines of liberty, equality, and fairness, ... it does not provide reliable, concrete support for any of these grand concepts." For Wiebe, democracy is simply "one among competing ways to conduct public affairs."

Trying to discover the essence of democracy in this way actually seems more appropriate for a political scientist than a historian: the process seems to transcend time and place, to ignore all the accumulated meanings Americans have given to democracy over the past two centuries. Wiebe does concede, however, that democracy in the United States has acquired at least one additional characteristic, something that he defines as "individual self-determination." This characteristic has created an important tension in American life between collective and individual self-rule.

With all these definitions and conditions laid out in the first ten pages of his book, Wiebe is prepared to take us through 200 years of our history. It is a rough journey, not to be undertaken by anyone who is unfamiliar with the detailed terrain of American history. Wiebe is a very distinguished historian who has written a number of books that together have covered much of America's national past over the last two centuries. No one can deny the depth of his scholarship, the breadth of his learning, the richness of his imagination. He is as capable as any historian today of seeing America's national history as a whole.

Yet reading a Wiebe book is no easy task, and this one isn't an exception. His style is dense and abstract. He usually takes such a bird's-eye (or satellite) view of things that individuals and events are lost from sight, and structural movements and reified entities like "democracy," "the People" or "the lower class" come "crashing across" the century, "disappear," or "sink." What will readers make of a sentence such as this one: "As the modern state solidified, it filled the spaces that a disintegrating People vacated, then rolled on to create empires of its own"?

Wiebe's imagination is so rich, his love of metaphors is so intense, that at times we seem to be traveling through a historical world that nobody has ever quite seen before. His intriguing notion of "lodge democracy," or nineteenth-century white male society broken into a variety of fraternal groups, gets carried on page after page to the point where we forget that it is his invention, not the nineteenth century's. Wiebe likes pithy epigrammatic statements and often strains his writing to create just the right antimetabole, chiasmus, commutatio or some such rhetorical form. Sometimes these are especially insightful: "White men in America, spreading themselves thin early in the nineteenth century, assumed they could create a democracy without the state. Europeans, congregating in cities late in the century, needed the state to create their democracy." At other times they seem contrived and forced: "Reforms that originated in a desire to make governments more responsive to people's needs ended up making them less responsive to people's voices."

Still, if the reader is willing to persevere through this prose, there is much to be learned about American history. But unfortunately we don't learn anything about the origins of democracy. Wiebe begins his analysis in the early nineteenth century where he says democracy was born, but makes no effort to account for its sudden appearance. It just happened, a "miraculous transformation," he says. Wiebe seems strangely reluctant to connect the American Revolution in any way with the birth of democracy and self-government. "To the Revolutionary generation," he writes, "democracy was a minor matter." From the American Revolution, democracy "received a powerful symbolic vocabulary but little else." The Founders' "accomplishments had no calculable links to democracy." According to Wiebe, everything began in 1800.

The revolutionaries would have been astonished by Wiebe's statements. They thought that their revolution was all about popular self-government or democracy. It is true that at first they tended in a classical manner to identify democracy with direct rule by the people, but by the time the Constitution was drafted in 1787 many of them were referring to their governments as "democracies" or "representative democracies." James Madison and others in the 1780s certainly knew what democracy was about; in fact, the Constitution was designed to temper some of its excesses. Most of the developments that Wiebe thinks began after 1800, such as revivalistic challenges to organized religion or the westward movement of people, actually took off during the Revolutionary era.

The American Revolution was the most important event in the creation of American democracy. It challenged authority of all sorts and released powerful popular energies. Wiebe is correct, however, in asserting that the disintegrating and anti-authoritarian effects of democracy were not fully felt until the early decades of the nineteenth century. Society fell apart; Christianity fragmented into hundreds of competing pieces; and state power was privatized and dispersed to the point where by European standards it ceased to exist. The people disliked government and disliked paying taxes, and consequently, governments, both federal and state, did very little. In fact, American governmental expenditures in relation to gross national product ran five or six times less than those of European nations.

Many visiting Europeans were appalled by what they saw in America: a society seemingly out of control and full of violence, governments without a recognizable class of leaders, a culture obsessed with the making of money. They could not figure out what held this dynamic, atomized and decentralized society together. Wiebe's answer is politics, democratic politics—indeed, as far as white males are concerned, the most democratic politics the world has ever seen. It was the day-in and day-out participation of white males in politics—their ceaseless balloting, electioneering, voting, meeting, debating, caucusing, marching, chanting and demonstrating—that bound the nation together. White men, says Wiebe, got into politics by simply getting into it. "The driving force behind nineteenth-century democracy was thousands of people spurring thousands of other people to act." American democracy gathered great mixes of small local groups "into a whole People and made the People, in turn, integral to building an American nation." Although this nineteenth-century democracy excluded Indians, women and most blacks from political participation, Wiebe still considers it the standard against which all other later variants of American democracy must be measured.

The second part of Wiebe's book, running from the 1890s to the 1920s, he

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calls "Metamorphosis." In many respects this section is the heart of the book, for it is in this period, Wiebe argues, that the sources of our modern democratic problems are to be found. The most important force in changing America's democracy was what he calls "the sinking of the lower class." Nineteenth-century society, he writes, had been more or less divided into two parts, a lower class and a middle class, with the crucial line of division running through what Europeans called the working classes. In America the absence of a traditional aristocracy and the dignity given to labor, even manual labor, prevented a European kind of class consciousness from developing, and mingling between the two classes was common. But in the years after 1890, with growing industrialization, more wage-earning workers and increased immigration of unskilled and non-English speaking peoples, the lower class became more conspicuous, more ethnic, more poor and more separated from the rest of the society.

Between the 1890s and the 1920s, Wiebe argues, "the lights dimmed in the great showcase of nineteenth-century democracy." As the lower class sank in status and respectability, the participating electorate became smaller, turnouts declining from about 80 percent of eligible voters in 1896 to under 50 percent by 1924. American democracy lost its earlier vitality, and Americans lost sight of what they had once had. Even John Dewey, one of the few to retain faith in community-based democracy, came to scorn all the huzzahing that had characterized nineteenth-century popular politics.

At the same time as the lower class was losing respectability, new hierarchies were emerging. Early twentieth-century society became more urban, more white-collar, more educated and more preoccupied with expertise. These developments forced a realignment out of which grew America's modern three-class system—a lower class, a middle class and what Wiebe calls a "national class." This national class was "the critical innovation," and it was "national both in the sense of transcending local attachments or boundaries and in the sense of holding central, strategic positions in American society." Wiebe's national class is urban, professional and cosmopolitan, and includes corporate managers and all those who produce and manipulate information and knowledge. This class has been engaged in a long struggle with a locally based middle class, and that struggle has shaped most of the issues of twentieth-century politics, from Prohibition to abortion.

With the emergence of this new three-class system, the nineteenth-century conception of "the People" dissolved. Progressive reformers and their heirs set out to eliminate or bypass incompetent voters. Ordinary people couldn't be trusted any longer with the complicated decisions required in a complex modern world. The more local and popularly based the institutions, the more dangerous they were. Better to rely on commissions of experts, trained managers or judges than on the elected representatives of the people, especially those elected in the localities or the states.

In the third part of his book, entitled "Modern Democracy," Wiebe takes us from the 1920s to the present. During this period, the characteristics of the national class already apparent at the beginning of the century became more conspicuous. Members of this class tended to belittle the sensibilities of the local middle class, scorning its taste, its work, its morality, its religiosity. The national class rejected outright the decentralized federalism of nineteenth-century democracy and came to rely on the least popular branch of the most distant government for a defense of individual rights. It set about removing from the governmental sphere moral and cultural issues that it believed belonged exclusively to the private realm of indi-

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viduals. It essentially cut the public out of the discussion of the United States' international commitments and gave a cadre of unelected officials control over national security policy.

This national class, in fact, came to express disdain for all those in government who were responsive to popular sentiment. Government became paternalistic, with the expert few overseeing the unqualified many. "In Lincoln's day, the government was expected to enact the People's will; now it was supposed to look after the people's needs." With the civil rights movement of the 1960s, the national class achieved its greatest victory over the local middle class; it collaborated with the lower class to open up public spaces for African Americans and thus created "the most important reform of late twentieth-century democracy."

Only in economics did the national class make substantial concessions to the local middle class in what Wiebe calls "the compromise of the 1930s." In this compromise, national class leaders promised increased economic assistance for local America in return for local loyalty to the existing national parties. "Members of the national class would set broad economic policy; members of the local middle class could set the rules in their own localities, including many of the decisions about how monies would be allocated." Wiebe says that this arrangement, which "constituted one of the major political compromises in American history," remained in effect throughout the balance of the twentieth century.

In the end, this national class reconceived the role of government for the twentieth century. Results became more important than the process of democracy. "In the nineteenth century, democracy shaped the state; in the twentieth the state shaped democracy." The people no longer decided what was best for themselves; now leaders had to decide for them. The national class shifted the meaning of individual rights from freedoms to claims, from something discovered to something created; and soon the demands to multiply individual rights became a process that fed on itself. As democracy became little more than the fulfillment of individual desires, individuals themselves became weaker and more and more dependent on a stronger government to protect their rights. "Once individual privacy meant leaving public life and separating oneself from its authorities. Now individual privacy required entering public life and seeking guarantees from its authorities."

As a consequence of this high-altitude tour through American history, we have been made to understand that the problems of American democracy are very deep-rooted, the product in fact of long-term developments and what Wiebe calls "subterranean shifts" in the society. He concludes that all of the recent complaints about our democracy—the absence of leadership, the decline of popular participation, the self-indulgence of individuals and the loss of community—lack historical awareness. The problems of American democracy, Wiebe says, are not of recent origin; they grew out of the social transformation that occurred between the 1890s and the 1920s, a transformation that generated the centralization and hierarchy that have worked to constrain our democracy ever since.

In the light of such an historical understanding, Wiebe spends the last dozen or so pages of his book showing recent democratic critics just what might be done to invigorate our democracy. Though he thinks of himself as a hard-headed historian grounded in the realities of what the past allows us, he actually emerges as a radical and utopian democrat. Some of his suggestions, indeed, are utterly fanciful. His central message is, pull down the hierarchies and pull away from the centers of power. Small governments and local communities are better, for they are in accord with America's popular historical traditions. The main thing is to get people involved, as voters, as actors, as decision-makers, and "to activate their political rights wherever they go," in effect, politicizing "their life ways—at work and at leisure, in clubs and in causes, by gender and by race, through ethnicity and through religion." "Guerrilla politics" is needed, says Wiebe, the kind of disrespectful local politics that will subvert a centralized, hierarchical superstructure and create a human-scale world. Corporations, for example, would become responsible to the citizens whom their actions affect; their charters, their very existence, ought to be renewed and justified every fifteen years or so.

Wiebe believes that people need to care deeply about politics. If a majority of the voters do not participate in an election, the election ought to be invalidated and rescheduled. We should not fear emotion in politics: how we rule ourselves should engage our deepest feelings. The nineteenth century thrived with a crude and rude politics, and we can thrive with such a politics, too. Since money in politics is ingrained in our traditions, we ought not to eliminate it, but to scatter and to localize its effects. The same is true of individualism: it is part of our history and it is here to stay. And so a revitalized democracy must forget about creating some sort of collective community and learn to incorporate individual rights into itself. The important point is to establish "the principle that democracy is something to do, not something to receive, that it is something citizens must enact for themselves."

Wiebe rightly sees our history as a means of telling us what we currently can and cannot do, but in the end his version of our history seems stultifying

Place

My first morning back, there's a faint cap of cloud
on the brow of Tully Mountain, flash of a blackbird
between sycamore and ash, glint of dew on a few daisies
the scythe has spared. There are lilies of the valley
in a battered can, the cover of my mother's prayerbook
wrinkles with light, and my neighbour's rickety mutt
mumbles a scrap of stale bread. Now in early sunshine
the houses across the lake seem solid as chateaus and
seem as if they'd stand forever. High-arched, the barns
are granaries of light, but the old cottages lie like bones
over the open fields. And here, slightly apologetic,
comes the cough of the cock pheasant, stepping
among potato drills as if he owned the place: crimson
and cinnabar his head, his feathers cinnamon and gold,
he will hide in his own life down there where
whins and heather and boggy grass can flourish
and the sunny morning be sheer heaven to him.

EAMON GRENNAN

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and unduly pessimistic. It shows us, he says, that major changes in our democracy will not occur gradually through many small accretions or adjustments. Only a "systemic breakdown" of the centralized hierarchical structure of social relations that first took shape between the 1890s and the 1920s will allow for a general renewal of our politics. "Only breakdown, never patchwork," can shake the iron grip that established oligarchies have on our society.

Maybe. In the face of his subterranean structural determinants, all that Wiebe can offer is hope and a vision of how we once were. Since he wrote his book, however, events and an election suggest that popular grassroots politics and the local middle class may not be as weak as he thinks they are. Although the Republicans' Contract with America may eventually be severely whittled down or compromised away, the political climate still has shifted radically. Talk of devolution and decentralization is in the air, and not just by right-wingers. Many of the sixty or so cultural critics whom Wiebe cites have made many of the same complaints about our democracy and the same suggestions for reform that Wiebe makes. In fact, Wiebe's description of his "national class" resembles remarkably the late Christopher Lasch's description of the "new elites" in his last book. Far from being uninterested in politics, the people seem very emotionally involved in it. Indeed, in the eyes of some they are too emotionally involved.

Wiebe's ideal democracy is lots of people acting locally and mistrusting distant centralized power. Since he believes that "an attachment to small, flexible groups" is "basic to democratic politics," what would he make of today's popular militia groups? He advocates placing "as few restraints as possible on the expression of feelings," which presumably means that radio talk shows—the voice of the local middle class—ought to be encouraged. All of this suggests that cultural critics ought to be very careful about what they wish for. Their wishes may come true.

GORDON S. WOOD is University Professor and professor of history at Brown University.

Polls Apart

BY NATHAN GLAZER

Facing Up to the American Dream: Race, Class, and the Soul of the Nation by Jennifer L. Hochschild

(Princeton University Press, 412 pp., $29.95)

Jennifer Hochschild bravely tries to disassemble the central elements that are bound up in that vague but still politically and ideologically potent thing, "the American dream." And then she asks: Do blacks still share it? Is the faultline of race in American society becoming deeper? Neither the questions nor the answers are simple, but the short answer, and the most interesting of many answers that she gives, is that she finds a central paradox: for more successful American blacks, disaffection with the American dream seems to have grown; among less successful blacks, the poorer and (one assumes) the most troubled, the decline in faith is not so apparent.

Finding explanations for this is not easy, and a reader who follows Hochschild through her complex argument may conclude that it is seriously flawed by its reliance on public-opinion polls. For Hochschild, "the American dream" breaks down into four elements: everyone is entitled to pursue success; success may be pursued with a reasonable anticipation, but with no guarantee, that it will be attained; success is dependent on one's own actions; the actions upon which success depends should be seen as virtuous action, and indeed success itself is a sign of virtue. Hochschild draws these elements of the American dream variously from presidents, moral leaders, philosophers and poets, and she finds them potent in American popular culture. Or, as a Citicorp advertisement puts it, "the will to succeed is part of the American spirit. The instant you become an American, whether by birth or by choice, you are guaranteed a particular freedom that is nowhere mentioned in the Constitution, but in fact flows from it. You are guaranteed the freedom to succeed."

Many conclusions follow from these

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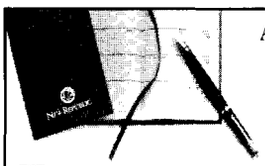

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premises, and perhaps the most significant conclusion is that failure is one's own fault, not the fault of society, or fate, or the upper classes, or the government. We are well aware of the common tendency today to blame all misfortune on someone else, and we have read in many recent accounts that we are turning into a society of litigious victims; but Hochschild finds that, at least at the level probed by public-opinion polls, this is not really true of the American people. Despite the critical orientation of many intellectuals toward the American dream as a hoax or a case of false consciousness, she is herself no critic of the American dream, either as a reality partially fulfilled or as an appropriate ideal. She wants to iron out the defects of the dream rather than to overturn it, and she feels the good health of our society depends not only on belief in the American dream but on its realization, and in particular on repairing its central failure, which is the inability of so many black Americans to participate in what it promises.

Hochschild notes that the considerable progress in income, occupation and status of many blacks has taken place together with an increase in the size and the social problems of the black poor. Economic inequality is greater among blacks than whites, and it has been growing. And, as we have been told by economists and commentators, it has also been growing among whites. So how does the "American dream" fare under these circumstances? It seems to have fared remarkably well: it is an almost universally accepted ideal. It is perhaps no surprise that almost everyone agrees, on the basis of many surveys, that "all citizens should have political equality and ... equal educational opportunities and opportunities in general...." Or that "Three-fourths or more of both races agree that all people warrant equal respect, that skills rather than needs should determine wages, that 'Americans should promote equal opportunity for all' rather than 'equal outcomes'...." And there are many more such findings about the great majority of Americans which do not particularly differentiate between white and black.

One wonders how sharply these generalizations affect the way in which people respond to current controversial issues. There is deep division, after all, about affirmative action, despite the agreement of three-quarters of Americans that skills rather than needs should determine wages, and other commonly accepted generalizations which should have some bearing on views about affirmative action. Oddly, however, there is little on affirmative action and similar issues in this book. Indeed, views on affirmative action, which are often queried in public-opinion polls, and demonstrate how much responses depend on the wording of the questions, get almost no attention from Hochschild.

Still, the agreement on general principles that Hochschild has discovered is impressive. It is even more surprising to learn, moreover, that blacks and whites diverge hardly at all when they are asked about their prospects of pursuing the American dream, and there has been no drift to divergence over the forty years that questions of this type have been asked. Consider the responses to the proposition: "Your opportunities to succeed are better than ... those your father had." When it was asked in 1947, 68 percent of the polled blacks, and 70 percent of the polled whites, agreed. And on questions of this type matters have not changed since. About prospects for children, blacks are regularly more optimistic than whites. The level of optimism regarding one's children's future has dropped since the 1970's, but blacks remain more optimistic than whites.

Blacks and whites also agree that their fate is in their own hands: "Over eight in ten blacks (compared with slightly fewer whites) insisted that 'no weakness or difficulty can hold us back if we have enough willpower.' " This is a response from the mid-1960s. By the mid-1980s more African Americans were prepared to admit a role for causes beyond their control, but still half (compared to two-thirds of whites) insisted that their life course reflected solely their own abilities. From such data one might well think that America is a nation of Pollyannas, white and black—and so one is relieved to discover there are some matters on which blacks and whites do disagree.

The issue is discrimination. Whites see it declining and believe that blacks have equal or greater opportunities than whites; and blacks sharply disagree. And whites and blacks disagree on such matters as the prospects for the black race in the future and the responsibility of blacks and whites for the failure of many blacks to move ahead. All this raises a question about the significance of the broad agreement on the general questions that Hochschild uses to measure the state of commitment to the American dream, but there are explanations of this contradiction. Blacks seem more optimistic about their own future and their children's future than they are about the future of blacks in general. Considering their own fate, they think of what they can do to shape it, and seem to believe they can do much. Considering black Americans in general, they become more doubtful and see barriers still holding them collectively back.

This perspective, which may reconcile personal commitment to the American dream with doubt about how it applies to blacks, seems to characterize more successful middle-class blacks rather than poorer blacks. "Succeeding more and enjoying it less," Hochschild calls this phenomenon, which is familiar to us from other spheres of American life. Aaron Wildavsky was perhaps the first to point to this recurring paradox: by many measures we have become healthier, and yet we worry more about our health; by many measures the environment is cleaner, but we worry more about it; and so on.

Hochschild tells us: "Well-off African Americans see more racial discrimination than do poor blacks, see less decline in discrimination, expect less improvement in the future, and claim to have experienced more [discrimination] in their own lives." And: "By the 1990s well-off blacks have come to doubt the reality of the American dream for African Americans...." The black poor are less skeptical about their own chances, their faith in the American dream has declined only slightly, and overall they think much better of American society. They are more likely to agree with the sentiment that "many of the problems which blacks in this country have today are brought on by blacks themselves," more likely to agree their problems are "due to ... lack of motivation."

How are we to make sense of this? One possible explanation is that the better-off blacks come more into contact with whites, and thus are more likely to encounter discrimination. Another is "relative deprivation": comparing themselves with whites, better-off blacks may feel deprivation more intensely as they go higher up, and their ambitions for income and occupational advance are fed by their increase. (Poorer blacks, from some of the poll evidence cited in Hochschild's book, try to find someone to whom they are superior, at least in virtue, and it is often people on welfare.)

There is no way of evaluating the weight of these and other possible solutions of these riddles, or if there is, it is not attempted in this book. And so one is free to choose the solution that one

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finds most congenial. My own preferred explanation is: education. In the surveys used here, the better-off and the worse-off are differentiated by amount of education, which is good enough as a way of differentiating them generally in public-opinion polls, where one can place more trust in a self-description about education than about income or occupation. But this suggests that we might consider the impact of more education in its own right, and not simply as a proxy for education and income. More schooling means more exposure in school to explanations of why blacks are worse off, and in almost any school the explanation will be found in American history and its record of prejudice and discrimination against blacks, and not in the moral failings of blacks. The result is that the better-educated believe that their failure to advance further, even when they have done quite well, is owing to discrimination, while the less educated accept the more traditional explanations, the ones incorporated into the American dream, about will and motivation.

The disaffection of the more successful blacks, documented in these surveys is no great surprise. Hochschild also surveys the huge mass of journalism, autobiography and analysis that tells the same story about successful blacks. On the other hand, these qualitative materials do not support the evidence of the polls about the commitment of the black poor to the American dream. They "remain under the spell," according to Hochschild. But do they? The survey results which support this judgment vary widely; but there is not much in Hochschild's study about the methodological differences that may account for the differences in results, and a methodologist might contest the robustness of some of her generalizations.

I am struck by one set of questions—tests of paranoia, let us call them—which do not show much distinction among blacks by education. "The government deliberately singles out and investigates black public officials....": more of the college-educated blacks believe this than the others, 37 to 25 percent. "The government deliberately makes sure that drugs are easily available in poor black neighborhoods in order to harm black people": 29 percent of the college-educated agree, only 18 percent of the others. A further 38 percent of the college educated think this might be true, 24 percent of the others. So two-thirds of the college-educated believe it is or might be true that the government deliberately makes drugs available in poor black neighborhoods. "The virus which causes AIDS was deliberately created in a laboratory in order to infect black people": 9 percent of the college-educated agree, 10 percent of the others. But if we are reassured by the low percentage of those who think this is true, consider that a further 31 percent of the college-educated respond that it might be true, only 8 percent of the others. One is taken aback at the finding that college education apparently does nothing to moderate belief in absurdities. I have no explanation for this anomaly.

Finally one is left somewhat unsatisfied that Hochschild's analysis of survey results has given us a good picture of black opinion and belief, though I am not sure how to get a better one. To plumb the degree of attachment to general principle does not seem to get us very far. More subtle forms of surveying opinion are necessary. They would get us deeper into what blacks believe, and into why they believe it. I believe—and as the book makes clear, most whites believe—that American society and government steadily improves in fairness to blacks. The national commitment to equality in treatment, expressed in law, in judicial opinion, in the practices of institutions, public and private, seems to me unshaken; and indeed it has been extended to the point where issues of favoritism have become major political controversies. But middle-class blacks don't agree, and one cannot be sure just what poorer blacks think. Fantasies, unfortunately, carry considerable weight. Education does not seem to make much difference. In some cases, in fact, it makes things worse. (Consider the responses to the question on government responsibility for the drug trade.)

It is important to remember, however, that we must not judge what is right and good and necessary on the basis of its effects on public opinion, and we must not change policy that is unequivocally mandated by our history and our principles because it does not meet with the approval of those whom it is intended to benefit. Still, there is a division between the way American blacks and American whites see our great racial problem, and it is very unsettling that this division is so great, the broad agreement on American principle notwithstanding.

NATHAN GLAZER is professor emeritus of education and sociology at Harvard University and the author most recently of *The Limits of Social Policy* (Harvard University Press).

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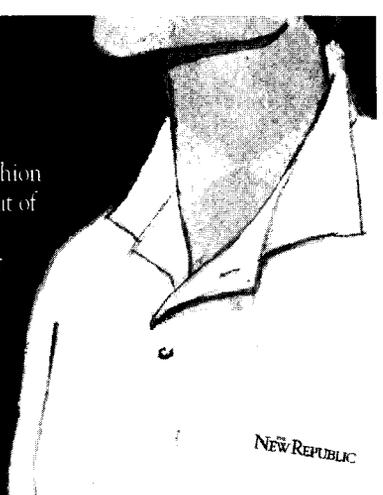

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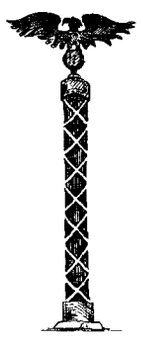
WASHINGTON DIARIST

Very Barry

LIKE IT OR NOT, AND I DON'T LIKE it much, Marion S. Barry is my mayor. When the rest of the country thinks of city government in Washington, my hometown, they think Big Crack Attack. Last year, Barry, freshly re-elected with the overwhelming support of the city's poor black majority, offered this advice for the rest of us: "Just get over it." Galling as that was to the people who pay a grossly disproportionate share of the taxes in town, he had a point. No matter how bad Barry's record is, I've gotten pretty bored with listening to white D.C. denizens complain as if one man at the top were responsible for all of Washington's ills. The majority chose Barry, and now the rest of us (including the black middle class, who are leaving the city in droves) can either make the best of it—or move. Since I'm not moving, I decided to check out hizzoner up close.

THE GOOD NEWS ABOUT MARION Barry (and I realize this is damning him with faint praise) is that he seems to have put his personal house more or less in order. During the final days of his disastrous third term, which ended in 1990, the mayor was virtually incapacitated by crack; in increasingly rare public appearances, he spoke little more than mumbled nonsense. But he wasn't like that when I saw him recently at a two-hour town meeting held in a steamy church basement in Ward 3, the lily-white section of town encompassing neighborhoods with names like Spring Valley and Chevy Chase. Barry was witty, alert and well-informed. He knew exactly how many trash cans there are in the city. He knew exactly how much money ($75,000) the Palisades community was trying to raise for recreation equipment. Wielding a microphone Oprah-style, Barry seemed older but very much in possession of the same raw political talent which, an eon ago, propelled him from street activist to power broker—and which he then dissipated in the movable orgy that his life became in the late '80s.

THE WARD 3 CROWD WAS SURLY, ready to jump on Barry about the bad trash pickup and rutted streets they're getting in return for their tax payments. Barry was on guard at first, punctuating his statistically complex discussion of the city's budget mess with the refrain "I know you all don't believe that, but it's true." But he soon recovered the initiative. Someone stood up to gripe about potholes. Barry snatched the microphone from his public works chief and asked the audience to tick off the potholes in their neighborhood. At each shouted address, he instructed a nearby flunky to write it down. Who knows if any of these streets got repaired? But there was something breathtaking about the way Barry took a restless crowd of white people who pay his salary and turned them into a tame crowd of white people who need his indulgences. Barry even received frequent warm applause; he spent two hours in front of a mostly white, largely Jewish audience and managed to avoid having anyone challenge his endorsement of Louis Farrakhan's upcoming Million Man March in D.C. In fact, the worst moment, from Barry's point of view, came when a black man at the back of the hall cried out that the city owed his business money. "Well, we can't talk about *that* right now," Barry snapped. End of subject.



THE NEXT NIGHT, BARRY'S ROAD show shifted eight miles east to the Ward 6 town meeting at Anacostia High School—"across the river" in local parlance. It might as well be across the universe from where I live. To his credit, however, Barry gave the mostly black Ward 6 audience the same speech about the dire condition of the city and the goals of his administration that he had given to the Ward 3 crowd the night before. There was no point denying the awful truth—the city's broke and largely under the control of a Republican Congress. Besides, Barry knew better than to micro-pander in two different neighborhoods when local TV was recording both meetings. The main difference was that in Ward 6 the citizenry bombarded the mayor and his police commanders with the locations of open-air drug markets as well as potholes. Once again, the mayor demonstrated his minute knowledge of D.C. geography, correcting some questioners about the addresses of the various crack-o-ramas in town. And who would know better than a former shopper himself? There was something eerie about listening to him promise to wipe out drugs and about listening to his acting police chief profess gratitude for the complete support he was getting from the mayor. In the early '80s, Barry contributed mightily to the breakdown of law and order in the city—not only by his own misbehavior but also by starving the police force of manpower and funds. One of the first cost-cutting measures of his current term was to slash police pay; some 600 cops have retired or quit as a result. Toward the end of the meeting, a 7-year-old boy stood up at a microphone and announced in a soft voice: "I got shot in a drive-by shooting." His mother then stepped forward to describe in graphic detail the wounds that had almost cost the boy his life. The room full of citizens and Barry cabinet officials sat in stunned silence for a moment, then roused itself into a round of awkward applause. Barry himself had temporarily drifted to the hallway outside.

WHETHER WE ARE WITNESSing the return of the good old Marion Barry or the bad old Marion Barry, the impact will be limited, since the Republican Congress has taken control over much of the city government. Never again will Barry have access to the millions that Democrats once unquestioningly funneled to the city. But he might get just enough dollars to keep things afloat—if he and his cabinet show they can make the city work. He is, in effect, on probation. And this is entirely appropriate. But Newt Gingrich and the Republicans are on probation as well. They must show that their reassertion of control will not mean a return to the days when the city was the plaything of Hill segregationists. So far, Gingrich has performed with remarkable moderation: recently he agreed not to hold up a cash infusion to the city even though Barry, crying "save home rule," refused to accept a Republican demand to end the city's self-defeating rent controls. On rent control, as on so many other issues, democracy means the elected officials of Washington have a right to make their own mistakes. Yes, city government had deteriorated so badly that only federal intervention could save it. But the D.C. government's legitimacy also hinges on some degree of local autonomy; Gingrich and company make a similar point when they talk about reducing the federal role in local affairs elsewhere. If we're lucky, the final surprise of Marion Barry's erratic career will be that a rough balance between local control and governmental competence emerges from his respectful tug-of-war with the new-age conservative ideologue from Georgia.

CHARLES LANE

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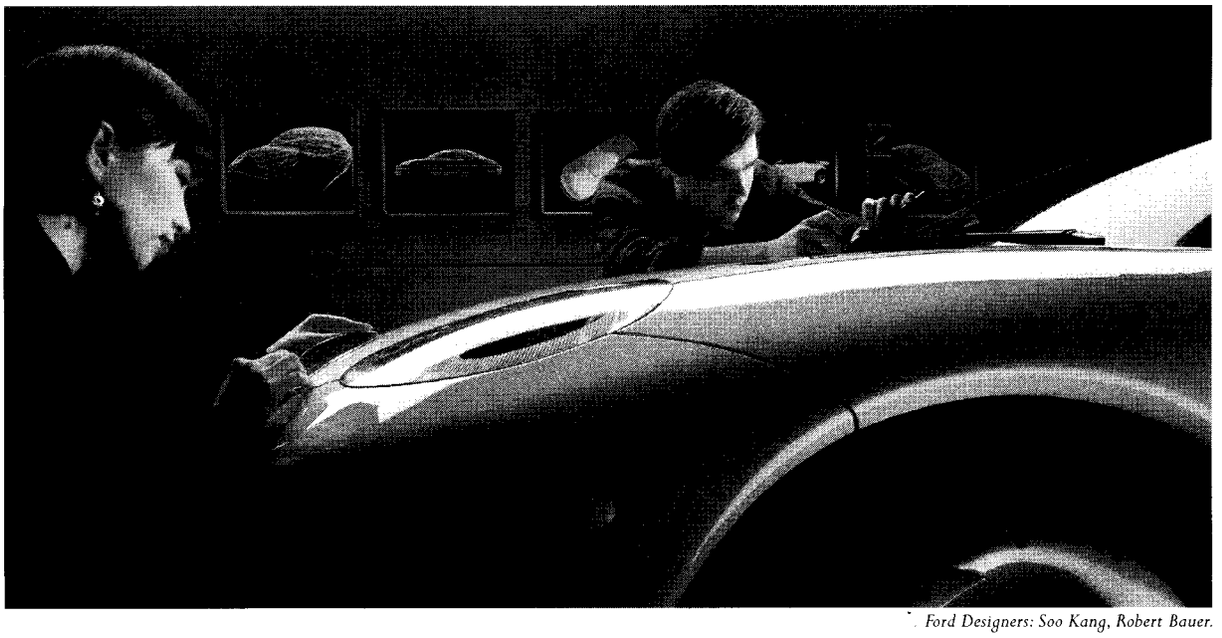

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